

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC MEETING

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MONDAY,

NOVEMBER 14, 2005

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The Public Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 6:30 p.m., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
KEVIN HILDEBRAND	Commissioner (AOC)
GREGORY JEFFRIES	Commissioner
JOHN G. PARSONS	Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Acting Secretary
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OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN
ARTHUR JACKSON
JOEL LAWSON
ARTHUR ROGERS
JENNIFER STEINGASSER
KAREN THOMAS

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

This transcript constitutes the minutes
from the Public Meeting held on November 14, 2005.

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P-R-O-C-E-E-D-I-N-G-S

6:46 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a Public Meeting of the Zoning Commission of the District of Columbia for Monday, November 14, 2005. My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners Kevin Hildebrand, John Parsons and Greg Jeffries.

Copies of our agenda are on the table near the door, which I would encourage you to get one. We need to make a few changes before we get started. And I would just remind everyone that we don't take testimony at our Public Meetings unless you are specifically invited to come forward by the Commission.

The couple of changes that I am going to make are under proposed action. The first item Case No. 05-20, the text amendment for Asphalt Plants will be postponed to a Special Public Meeting a week from today, November 21st, at 6:15 p.m. That is prior to a hearing that we have that night.

And then Case No. 05-02, the Residential Recreation Space - Part A, is being postponed as well. And I don't think we have any other changes. And Mrs.

1 Schellin, any preliminary matters?

2 MS. SCHELLIN: No, ma'am.

3 COMMISSIONER HILDEBRAND: Madam Chair, I
4 have one preliminary matter.

5 CHAIRPERSON MITTEN: Please.

6 COMMISSIONER HILDEBRAND: It's kind of a
7 bitter sweet moment in many ways. I have only been
8 with the Commission now for nearly two years and it
9 has been an incredible experience meeting and working
10 with all of you, and I mean all of you, including BZA.

11 But I have asked Alan Hantman, the
12 Architect of the Capitol, to reassign the Zoning
13 Commission position so that I can focus my energies
14 once again on restoring my home and to do some
15 personal things. And he has reluctantly agreed, but
16 he has found a remarkable candidate, who is Michael
17 Turnbull. He is the Assistant Architect of the
18 Capitol and he is a fellow of the American Institute
19 of Architects with more than 30 years of experience
20 and he is in the audience tonight.

21 I just would like to introduce him to the
22 Commission and the audience. Thank you.

23 CHAIRPERSON MITTEN: Thank you. And will
24 you be staying with us until you wrap up some of these
25 issues?

1 COMMISSIONER HILDEBRAND: I will. I will
2 continue with my cases that I have heard and Mike will
3 pick up all the new cases that are set down tonight
4 and will hear them in the future.

5 CHAIRPERSON MITTEN: Okay. Well, we will
6 save our cheers for another moment then. When you
7 said you were going to work on restoring something, I
8 thought you were going to say work on restoring this,
9 but it's just your house. Okay. Well, we look
10 forward to Mr. Turnbull joining us.

11 So I'll turn to the Office of Planning
12 with the status report.

13 MS. STEINGASSER: Madam Chair,
14 Commissioners, the status report is in front of me on
15 the dias. We had a lot of PUDs coming forward. We
16 have already mentioned the Asphalt Plants and the
17 Residential Rec Space. We will be bringing back a
18 report to the Commission on the Residential Rec Space
19 within three months looking at the impacts of the
20 amounts which generates now towards residential use as
21 opposed to recreation use and the potential of using
22 that in combination with inclusionary zoning as well
23 as just using it all together, so that we have a full
24 understanding of what that impact would be. With
25 that, I stand available for questions.

1 CHAIRPERSON MITTEN: I just want to
2 clarify about the residential recreation space and
3 coming back after we had suggested what direction our
4 decision is going to take. And can you just elaborate
5 a bit on what the Office of Planning looks to propose?
6 Rather than be an elimination, just kind of the
7 direction that we have talked about.

8 MS. STEINGASSER: The Commission was
9 looking at just complete elimination and what the
10 Office of Planning would prefer to do is recognizing
11 that most of that square footage wouldn't just
12 disappear, it would get incorporated into additional
13 residential units, larger units, so it does have a
14 direct connection to residential units and square
15 footage.

16 We would like to look at releasing that
17 square footage as possible compensation with other
18 incentives for the inclusionary zoning that is being
19 considered by the Commission, because we think there
20 is a direct relationship between the rec space and
21 residential.

22 CHAIRPERSON MITTEN: Okay.

23 MS. STEINGASSER: So that's what we would
24 be looking at.

25 CHAIRPERSON MITTEN: Thank you.

1 MS. STEINGASSER: And I would also point
2 out that especially because it is in commercial areas
3 and in areas where we have heard a lot of concern
4 about tipping that balance between residential and
5 commercial, this is one of these things we think can
6 be very helpful.

7 CHAIRPERSON MITTEN: Can you give us a
8 sense of what is happening with the zoning for
9 Reservation 13?

10 MS. STEINGASSER: Yes, that's returning
11 the question. We're moving forward with the second
12 phase contract to get the consultant to help us codify
13 it, so that it can be advertised and moved to public
14 hearing. And we look to have that done in the next
15 four or five months. Because what we had before was
16 the fund base based on the plan and now we have got to
17 get that written up in a form that we can get into the
18 D.C. Register.

19 CHAIRPERSON MITTEN: So it's actually
20 being done and places are still a long time away?

21 MS. STEINGASSER: Yes, I would guess eight
22 months maybe.

23 CHAIRPERSON MITTEN: Okay. The text
24 amendment for the emergency shelters in the Industrial
25 Zones?

1 MS. STEINGASSER: Yes, that's also being
2 coordinated with the Department of Mental Health and
3 we're urging them to get some information and it's
4 very difficult to get information on exactly what is
5 needed and where.

6 CHAIRPERSON MITTEN: That one, in
7 particular, the issue seems very simple.

8 MS. STEINGASSER: Yes.

9 CHAIRPERSON MITTEN: And I think, you
10 know, it would help just move it along if you just
11 bring something back to us with whatever lack of
12 information, whatever is lacking and we'll decide how
13 to deal with it. Because it's not helping the people
14 that need help for that to be done, going out there.
15 It has an impact, a significant impact on the
16 industrial study, I would think. So I just want to --

17 MS. STEINGASSER: Okay.

18 CHAIRPERSON MITTEN: -- move that along.
19 Any questions for the Office of Planning?

20 VICE CHAIR HOOD: Yes, Madam Chair, I
21 would like to ask Ms. Steingasser about the questioned
22 facilities in CM Zone where this is at.

23 MS. STEINGASSER: That one, we have gotten
24 absolutely no feedback at all from the relevant
25 agencies on how to move forward. Originally, we were

1 concerned about it and we tied them together since we
2 were amending. At the round-table discussions, we did
3 not get any kind of useable feedback, so we have been
4 trying to deal with the different agencies and we have
5 not gotten any information at all. So we can make
6 another stab at that. But there has been no response
7 on how they would like us to proceed and what their
8 issues were to moving forward.

9 VICE CHAIR HOOD: Are we also looking
10 within the community?

11 MS. STEINGASSER: We aren't working with
12 any particular community. There were cases that have
13 been appealed through BZA, different communities, but
14 we had the one general round-table that was advertised
15 to all the ANCs.

16 VICE CHAIR HOOD: And you got no response?

17 MS. STEINGASSER: We did get a few ANCs
18 that showed and testified from Wards 2, 8 and 3, I
19 believe.

20 VICE CHAIR HOOD: Okay.

21 MS. STEINGASSER: I would have to check
22 the record on that. It has been a while since.

23 VICE CHAIR HOOD: I'm surprised we haven't
24 gotten a response. That is a big issue and I think
25 it's just waiting in the wind.

1 MS. STEINGASSER: It is. And it hasn't
2 been set down, that particular, we separated the two
3 issues. We put them together and then we separated
4 them.

5 VICE CHAIR HOOD: Okay. All right. Well,
6 thank you.

7 CHAIRPERSON MITTEN: Anyone else? Okay.
8 Thank you. Then we will move to the first item on the
9 hearing action, which is Case No., let's see, oh, I
10 guess that is right, 70-16A. This is the 2101 L
11 Street LLC. I thought the number was wrong. I didn't
12 remember how old that one is. Mr. Jackson?

13 MR. JACKSON: Good evening, Madam Chair
14 and Members of the Commission. My name is Arthur
15 Jackson. I'm the development use specialist in the
16 District of Columbia Office of Planning and I'll
17 present a brief summary of the Office of Planning's
18 preliminary report on this application.

19 The applicant CECS L Street LLC requests
20 Commission approval of a modification to a planning
21 development approved in 1973. The subject property is
22 developed with a two-story office building which is
23 approximately 370,000 square feet of floor area,
24 including 32,000 square feet of ground floor retail
25 and service space and approximately 4,000 square feet

1 of open arcade along both street frontages.

2 The applicant would now like to replace
3 the existing brick and precast concrete facade with a
4 metal and glass curtain wall, reduce the amount of
5 ground floor retail space that is provided and
6 eliminate the open arcade ground floor and the 9th
7 floor recesses to extend the habitable floor area
8 within the building to the property line.
9 Furthermore, the floor area of the building should not
10 substantially change as a result of the referenced
11 changes.

12 The generalized land use plan designates
13 this other property as mixed-use, high density
14 residential, characterized by HUD NC apartments as
15 predominant users and universally commercial,
16 characterized by shopping services that are offered.
17 It's a great large concentration of a variety of goods
18 within the central employment area. It has
19 predominant uses. Thus, the existing proposed office
20 uses a management system with that designation.

21 The proposed things would also support a
22 major feeling of the plan of improving the physical
23 character of the District. The Office of Planning has
24 determined that overall the architectural elements,
25 vehicular and parking would be the bicycle parking

1 required by Final Order No. 78, already admitted, and
2 as required by the Zoning Regulations for the Zoning
3 Commission to consider rescheduling for a hearing,
4 scheduling a hearing.

5 Moreover, the Office of Planning plans to
6 propose changes to make existing ground floor retail
7 space more marketable to potential tenants and more
8 accessible to potential customers walking along the
9 adjacent street frontage. The D.C. Department of
10 Transportation has also expressed no concerns about
11 the proposed modification.

12 The Office of Planning concludes the
13 proposal does not create a system with a conscious
14 plan and supports a major theme in the plan and
15 therefore recommends scheduling this modification for
16 a public hearing while noting the move to resolve
17 several issues relative to this request. With that,
18 we include our overall summary of the Office of
19 Planning report and we're available to answer
20 questions.

21 CHAIRPERSON MITTEN: Thank you, Mr.
22 Jackson. We finally found a PUD that predates Mr.
23 Parsons. Are there any questions for Mr. Jackson or
24 comments on the application? Mr. Hildebrand?

25 COMMISSIONER HILDEBRAND: Yes, actually I

1 do have a few. One is a technical question. I notice
2 in looking at the floor plan on page 4 that they are
3 removing the existing garage air intake and they are
4 noting that they are going to be relocated elsewhere.
5 But in their new work plan they don't show any
6 indication of where those are going. So make sure we
7 don't lose that in the translation. Also, in the
8 elevations there is a roof top addition that is not
9 addressed anywhere in the text or in the OP report.
10 Could you describe that a little bit more for us what
11 that is? The large eyebrow that's going across the
12 facade.

13 MR. JACKSON: We will be looking at that
14 as the architectural feature as we get more details.

15 COMMISSIONER HILDEBRAND: But it looks
16 like it has quite a large mass that comes the entire
17 length of the building and it has depth that you can
18 see from the side elevation. Has the applicant said
19 anything? Is that interior space? Is it --

20 MR. JACKSON: As far as we know, it's not
21 interior space.

22 COMMISSIONER HILDEBRAND: I think we need
23 a little bit more information on what they are
24 proposing there, because it doesn't change the height
25 of the building, which is a rooftop structure. It is

1 set back appropriately. Does it meet the definition
2 of an architectural embellishment, if it's not? Those
3 kind of things.

4 MR. JACKSON: Okay.

5 CHAIRPERSON MITTEN: Anything else? Mr.
6 Parsons?

7 COMMISSIONER PARSONS: I follow
8 Commissioner Hildebrand. This rooftop addition or
9 whatever we're going to call this to me is enough to
10 say I will vote against this being set down. This is
11 not, in my view, an architectural embellishment under
12 our definition. This is some kind of shelving device
13 to hover over the street to serve no particular
14 purpose. I mean, it's simply there as ornamentation.
15 Somehow the towering of the side of the building with
16 an antenna or whatever is on the top would fit the
17 standard, I think, of architectural embellishment, but
18 not this device, which goes along the whole facade.

19 For some reason it doesn't extend the rest
20 of the building, which looks unfinished. But I don't
21 like it anyway. But I mean, it simply sets a
22 precedent that I don't think we should be engaged in
23 this necessarily. This non-habitable space is -- I
24 mean, we've been through our tower period and I've put
25 up with that. But this is something else, so I will

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1 vote against this.

2 CHAIRPERSON MITTEN: Anyone else?

3 COMMISSIONER PARSONS: Thank God somebody
4 is going to deal with the existing building that's
5 ugly. But this precedent really troubles me and it's
6 not something that I can think can be cured through a
7 hearing, that this should be stopped right now.

8 COMMISSIONER JEFFRIES: Well, I used to
9 have an office right next door to this building, so
10 I'm very familiar with the building and I'm quite
11 happy to see a curtain wall here. I think it's very
12 refreshing and really makes the building a lot more
13 lighter and contemporary and modern. I certainly
14 appreciate the comments of my colleague here as
15 relates to the rooftop. I guess I would just ask the
16 applicant to, obviously, give a lot more information
17 and detail about how that looks in context.

18 I personally say to give us a very
19 disengaged kind of element, but I'm not having,
20 obviously, the problems that my colleague is having.
21 But I think it probably just demands a lot more
22 information in terms of, you know, what they are
23 trying to achieve. I certainly see the L Street
24 elevation as, you know, looking as if it has been sort
25 of neglected. And so I just think it probably needs

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1 a lot more in the way of discussion. But I certainly
2 do appreciate the more modern vocabulary of the
3 building.

4 CHAIRPERSON MITTEN: Anyone else?

5 COMMISSIONER HILDEBRAND: I think part too
6 is the rendering technique that was used in presenting
7 the elevation to show them to the best advantage. I
8 think there is a lot of detail lost in the large gray
9 mass of the reno tone. You could begin to see that
10 there is some underlying levels of information there,
11 but it's just not reading on these reductions. And
12 perhaps when the applicant improves their package they
13 will try to remedy that situation as well.

14 VICE CHAIR HOOD: Madam Chair, I also
15 would associate my comments with Commissioner
16 Jeffries. While I haven't been formally trained as an
17 architect, in looking at this, I actually thought it
18 was rather unique. It was different. But I guess
19 maybe it will be all flushed out. I think a hearing
20 may at least bring me up to speed, but I kind of like
21 this, at least the way I look at this. Thank you.

22 CHAIRPERSON MITTEN: Thank you. I
23 appreciate Mr. Parsons' comments and I hope we do see
24 the additional description, study, consideration of
25 Mr. Parsons' comments. I am ready to move forward

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1 that we can at least have a hearing on the subject and
2 I would move that we set this case for modification
3 down.

4 COMMISSIONER JEFFRIES: I second.

5 CHAIRPERSON MITTEN: Any further
6 discussion? All those in favor, please, say aye.

7 COMMISSIONER HILDEBRAND: Aye.

8 VICE CHAIR HOOD: Aye.

9 COMMISSIONER JEFFRIES: Aye.

10 CHAIRPERSON MITTEN: Aye. Those opposed,
11 please, say no.

12 COMMISSIONER PARSONS: No.

13 CHAIRPERSON MITTEN: Mrs. Schellin, would
14 you record the vote, please?

15 MS. SCHELLIN: The staff would record the
16 vote as 4-1-0 to set down Case No. 70-16A.
17 Commissioner Mitten moving, Commissioner Jeffries
18 seconding, Commissioners Hildebrand and Hood in favor,
19 Commissioner Parsons against.

20 CHAIRPERSON MITTEN: Thank you. The next
21 is Case No. 05-10 which are additional text amendments
22 to the Capital Gateway Overlay. Mr. Lawson?

23 MR. LAWSON: Thank you, Madam Chair. My
24 name is Joel Lawson. I'm with the D.C. Office of
25 Planning. In 2002, the Zoning Commission adopted an

1 initiative, Trees on the Buzzard Point Capital Gateway
2 area and to map a new Overlay District. This
3 initiative will be zoned from Industrial to Mixed-use,
4 a large area of the southeast/southwest area, and
5 it's, obviously, specific criteria to encourage the
6 development of the vibrant mixed-use neighborhood with
7 strong connections to existing residential
8 neighborhoods and to the waterfront.

9 The Capital Overlay is now to include an
10 area also down by M Street to the north and the
11 Anacostia River to the south and from there to the
12 west and the southeast Federal Center site to the
13 east. It does not include existing low density
14 residential areas within the southwest neighborhood.
15 Within the Capital Gateway Overlay the area moving to
16 M Street for a depth of one half block is now zoned
17 Capital Gateway C-3-C. The area along the Anacostia
18 River is zoned Capital Gateway W-2. And most of the
19 remainder is on Capital Gateway CR.

20 In addition to rezoning the Capital
21 Overlay, it establishes a set of objectives or
22 purposes for the area, combines for a bonus density
23 and height for residential development, permits
24 combined live development to allocate residential and
25 commercial uses, permits the transfer of zone density

1 within the area, requires the provision of ground
2 floor retail and a 15 foot setback along M Street,
3 requires a 75 foot setback along the waterfront for a
4 publicly accessible open space and requires Zoning
5 Commission review for projects fronting M Street,
6 S.E., and within the Capital Overlay W-2 District.

7 The total area of private land within the
8 Capital Gateway Overlay is just under 100 acres, which
9 would promote about 23.5 million square feet of
10 development by right. Most of the area is
11 significantly underdeveloped, meaning low density
12 warehouse, industrial utility and parking uses. Few
13 of the properties provide access to the waterfront or
14 amenities to surrounding neighborhoods. There is a
15 lack of open space and few streetscape improvements.

16 The only Metro Station in the area is the
17 Navy Yard Station, although portions of the overlay
18 are within walking distance of Waterfront Station,
19 also on the Green Line. Although there has been
20 limited development activity until recently, there is
21 now intense interest within the development proposals,
22 either planned or underway. This is partly due to the
23 decision to locate the new baseball stadium in the
24 area, partly due to the Capital Gateway Overlay
25 Initiative itself, which rezoned land from industrial

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1 to mixed-commercial-residential, and partly due to the
2 proximity of the area to downtown, the major
3 transportation corridors, the waterfront and the
4 Washington Navy Yard.

5 In response to the significant new
6 development pressure and the response to the Anacostia
7 Waterfront Initiative and other recent planning
8 initiatives related to South Capitol Street, OP
9 proposes to amend the Capital Gateway Overlay. No map
10 amendments are proposed at this time and overall
11 density would not be amended.

12 Proposed text amendments include the
13 following objectives: The addition of objective or
14 purpose statements related to the foreign character of
15 South Capitol Street, Half Street, S.E., and 4th
16 Street, S.E. Combined lot development, amendments to
17 clarify and limit existing combined lot development
18 regulations to regulate the use of the section to
19 transfer deeds from one parcel to another within the
20 Capital Gateway Overlay. Proposed changes include
21 limiting the maximum floor area ratio of receding
22 parcel to 8.0 on parcels for which a height of 110
23 feet is permitted under the Height Act of 1910 or 8.5
24 on parcels for which a height of 130 feet is
25 permitted.

1 This is intended to ensure that the
2 density can adequately be accommodated within building
3 envelope constraints. Also, the amount of commercial
4 density transferred to ensure that the desired
5 residential mix of development is maintained and to
6 further encourage the provision of residential
7 development in the area. Also, on the combined lot
8 development allowing commercial buildings which we
9 will see of current combined light density to go to
10 the height that is permitted by the Height Act of 1910
11 within the Capital Gateway CR District for the purpose
12 of accommodating the additional density. And finally,
13 restricting the transfer to and from Capital Gateway
14 C-3-C District.

15 The Zoning Commission reviews. An
16 establishment under Zoning Commission review of any
17 building or structure in the subject area as proposed,
18 similar to the review, already required for properties
19 facing M Street on the ballpark side and within the
20 Capital Gateway W-2 District. OP feels this is
21 warranted given the intensity of the Government
22 anticipating in this area and the ability to achieve
23 by right densities and heights normally associated
24 with PUD review.

25 This review will be against a specific set

1 of objectives and guidelines for the area addressing
2 site and neighborhood context, architectural design,
3 pedestrian and vehicular movement, site planning,
4 views, sunlight, landscaping, sidewalk treatment and
5 environmental or green building and site design.

6 Now, for retail. The provision of ground
7 floor retail and uses on 1st Street, S.E., and Half
8 Street, S.E., is recommended to encourage streetscape
9 vitality and safety throughout the year and to
10 encourage the creation of a year-round destination
11 retail area. Regulations related to facade and
12 building depths developed into such preferred uses,
13 transparency, direct street access and minimum store
14 ceiling heights would also be proposed.

15 Setbacks. A number of specific setbacks
16 and upper story setbacks are proposed, including a
17 setback requirement of 15 feet, as well as one upper
18 story setback about 110 feet on South Capitol Street,
19 a 20 foot setback above the height of 65 feet on Half
20 Street, S.E. Half Street will serve as principal
21 pedestrian connection between the Metro Station and
22 the nearby ballpark site and the waterfront and is
23 envisioned as a primary pedestrian corridor with an
24 active restaurant and retail oriented streetscape.

25 However, while the setback is desirable,

1 hopefully, they will send in these figures proposed in
2 more detail prior to the public hearing and is
3 requesting feedback from the Commission, the
4 development community and line numbers within the area
5 with regards to the proposal now and the potential
6 impacts on development for specific feasibility on the
7 relevant parcels. And finally, the one upper story
8 setback about 110 feet is also proposed on Potomac
9 Avenue.

10 Driveways. Prohibiting new driveway
11 access for loading and parking from South Capitol
12 Street, Half Street, S.E. and P Street, S.W., is
13 proposed to limit the conflicts between pedestrians
14 and vehicles and to minimize the potential direct
15 access to parking and loading on the existing
16 residential neighborhoods.

17 With these amendments, OP feels that the
18 Capital Gateway Overlay respond to the rapid and
19 changing nature of the area and provide greater
20 opportunity for input from the community. The
21 amendments would further meet its goals/objectives and
22 major themes of the comprehensive plan and would not
23 significantly change permitted uses or overall align
24 these patterns, so we would have a limited impact on
25 the comprehensive plan and generalized Land Use Map.

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1 As such, the Office of Planning recommends
2 that this proposal be set down for public hearing.
3 And that concludes my testimony. And we are, of
4 course, available for questions. Thank you.

5 CHAIRPERSON MITTEN: Thank you. Do you
6 have text that is ready to advertise that accompanies
7 this or not?

8 MR. LAWSON: Our plan is to get feedback
9 from the Commission tonight and develop the text prior
10 to advertising, so it can be advertised.

11 CHAIRPERSON MITTEN: Do you have a sense
12 of how long it is going to take to develop the text?

13 MR. LAWSON: We started to work on it now.
14 We don't have very clear conversations with the Office
15 of the Attorney General. I don't expect it will take
16 a long time, because many of the regulations,
17 requirements are very similar to the ones we already
18 have. Either very similar to the ones already in the
19 Capital Gateway Overlay District or in the adjacent
20 southeast Federal Center, so we would be borrowing
21 heavily from those. But we will need to tailor them,
22 particularly, some of the regulations pertaining to
23 Half Street and 1st Street, which are a little bit
24 different from what we have seen so far.

25 CHAIRPERSON MITTEN: Okay. Questions for

1 Mr. Lawson?

2 COMMISSIONER HILDEBRAND: Yes. It does
3 seem a little bit premature to set something down that
4 we don't quite know what we are setting down.
5 Although, the one thing that definitely causes me some
6 pause is the concept of across the board increasing
7 the height of C-2/CR from 90 feet to 110 feet. That
8 guarantees that a higher area will be at 110 feet.

9 MR. LAWSON: The additional height would
10 just be for parcels which will receive additional
11 commercial density. It wouldn't be for all
12 properties. It would just be for ones which receive
13 commercial density through the combined lot
14 development.

15 COMMISSIONER HILDEBRAND: Isn't there
16 enough FAR being shunted off of the baseball site to
17 cover the entire area with the additional two stories?

18 MR. LAWSON: Not really. There is the
19 potential for density to be transferred off the
20 baseball site and as well as potential for transfer of
21 density from other sites within the Capital Gateway
22 Overlay District. But when we did our initial
23 figures, there were certainly more than enough
24 capacity within the CR District to accommodate all the
25 density, even if all of the density on the baseball

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1 site was transferred off, which I wouldn't expect to
2 happen.

3 COMMISSIONER HILDEBRAND: And that would
4 be accommodated at a height lower than the Height Act
5 limit?

6 MR. LAWSON: Pardon?

7 COMMISSIONER HILDEBRAND: Would that be
8 accommodated at a height lower than the Height Act
9 limit?

10 MR. LAWSON: Our analysis was based on
11 Height Act limit heights.

12 COMMISSIONER HILDEBRAND: Because what we
13 have done is we have avoided putting the wall on the
14 waterfront and we have put the wall one block away.
15 So we are walling off the Anacostia with development
16 just behind W-2. And it just seems in Congress with
17 the original concepts of what was planned there.

18 MR. LAWSON: Well, the W-2 is actually a
19 fairly wide zone and so it provides the buffer between
20 the waterfront and the density behind. There are --
21 of course, currently under existing regulations
22 residential buildings are allowed to go up to the
23 height that is permitted under the Height Act. And we
24 feel that with the design review process that we are
25 proposing for the Zoning Commission, we will be able

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1 to address some of the issues. And I think the very
2 real issue, I think, we're bringing out related to
3 views and access, which I'll probably be able to
4 address even better than straightforward buildings as,
5 you know, done as a matter-of-right.

6 COMMISSIONER HILDEBRAND: Yes, I'm sure
7 this won't be popular, but I would prefer to see the
8 combined lot eligibility for this particular area
9 removed as opposed to being modified to allow the
10 Government greater height.

11 CHAIRPERSON MITTEN: Mr. Jeffries?

12 MS. MCCARTHY: I think it is important to
13 note though that some of these areas which will now be
14 covered for design review under this proposal would
15 have been exempt from that previously because they
16 were neither bordering M Street nor the waterfront.
17 So it is a bit of a tradeoff. In exchange for that,
18 the Commission will get a chance to make sure that the
19 height is being used appropriately and attractively.

20 CHAIRPERSON MITTEN: Mr. Jeffries, did you
21 have?

22 COMMISSIONER JEFFRIES: Actually, I
23 started on something else, but I'll just comment a
24 little bit as relates to increased density. I think,
25 you know, we have been through this discussion several

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1 times and I guess we will continue on, at least from
2 where I sit. You know, I clearly see the need for
3 increased density in and around this stadium, as well
4 as the waterfront.

5 Particularly, again, as we have our
6 discussions around that or inclusionary zoning and
7 things of that sort, we really need to make certain
8 that areas where we can actually achieve this density
9 we should. So that's just a statement. My question
10 is around this whole notion of mandatory Zoning
11 Commission review.

12 Is there any way to organize this in such
13 a way that we are not reviewing everything that occurs
14 in this location? Is there some other way we could
15 stratify this that we're not taking a look at
16 everything?

17 MR. LAWSON: Certainly, the Commission
18 could establish specific areas or specific kinds of
19 development. You know, you could look at refining
20 that further. We thought it was appropriate for you
21 to look at pretty much everything for a number of
22 reasons. First of all, there are a number of really
23 large parcels down there, so it's -- and I would
24 expect that you will see -- well, these things are
25 foreign anyway, you know, see relatively large

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1 projects coming forward.

2 So it's not like you are going to see a
3 bunch of, you know, very small discrete little
4 buildings. You will see, you know, more like to see
5 larger projects coming forward anyway. And we also
6 felt that given just the intensity of the development,
7 it would be important for you to have -- to see
8 everything so you could relate the impacts of one
9 development against another. So you can look at the
10 key mode of impacts as opposed to having to come and
11 guess where the impacts might be one project we are
12 reviewing against the other project that you would not
13 be.

14 COMMISSIONER JEFFRIES: Okay. I
15 understand that. I mean, I just envision some area
16 where we have applicants, you know, waiting months to
17 actually, you know, get on the docket here to have
18 their PUD applications reviewed and would just sort of
19 slow down the process and that's the concern that I
20 have. So I would certainly hope the Commission can,
21 you know, clearly find a way to allow those by right
22 projects, whether it's size or scale or something that
23 won't necessarily have to come through the Commission.

24 MR. LAWSON: Right. The process as being
25 devised is actually a much significantly toned down

1 version as compared to a PUD. It does allow you to
2 look at -- it does allow the Commission in the
3 neighborhood to take a look at the issues that are
4 certainly a lot of importance in terms of neighborhood
5 character and these kinds of things. But it wouldn't
6 be a full blown PUD kind of process.

7 COMMISSIONER HILDEBRAND: Okay.

8 MS. MCCARTHY: And it doesn't require a
9 set down report. So you have eliminated that whole
10 step. It just goes directly. It's more like
11 processing a special exception, but going to the
12 Zoning Commission.

13 CHAIRPERSON MITTEN: Just on that point,
14 one of the things that concerns me is if you look at
15 the criteria that we will review M Street projects or
16 waterfront projects, they are pretty well-defined.
17 And these are, what has been proposed as guidelines,
18 very subjective in part, be of superior design
19 quality. That's something we have wrestled with with
20 PUDs, you know, and we know we can get three people to
21 agree with it, superior quality, then, you know, we
22 can move on.

23 But, you know, there's some kind of really
24 general things. Be sensitive to the establishment of
25 South Capitol Street. There's a monument on Civic

1 Boulevard. Promote the use of best practice,
2 environmental design and alternatives to the
3 automobile. I mean, I just see it as, you know, what
4 you are trying -- on one hand you're trying to have a
5 streamlined process, but by introducing a lot of
6 subjectivity into a streamlined process, you're
7 putting a drag on the process.

8 And so that's the thing that would concern
9 me. It's very important that these things get in
10 front of the Commission, but I think we need to be --
11 you know, have a little more objective criteria. That
12 would be my advice.

13 COMMISSIONER JEFFRIES: Well said, Madam
14 Chair.

15 CHAIRPERSON MITTEN: Thank you. Mr.
16 Parsons?

17 COMMISSIONER PARSONS: The same issue of
18 concern where you can anticipate from what you know is
19 going on, how many cases would be brought before us?
20 20, 30, 50, 10?

21 MR. LAWSON: Yes.

22 COMMISSIONER PARSONS: If it's 30 or 40,
23 we shouldn't do this.

24 MR. LAWSON: Yes, I wouldn't know. I
25 can't anticipate that. We certainly had a swooping

1 amount of feedback from people who are living in the
2 area and looking forward to income -- to come forward
3 with these proposals. Exactly how many that's going
4 to be, I honestly can't say right now. And I also
5 couldn't say exactly what kind of a time frame those
6 would be. Would they all come in in a very short time
7 period or will the market change such that these
8 proposals come in a little bit slower than we think
9 they will right now. But we can't anticipate that
10 right now.

11 COMMISSIONER PARSONS: How many are you
12 assuming?

13 MR. LAWSON: About 10. It's certainly a
14 much greater number than that. Even under the
15 existing moving requirements, just property space on
16 M Street and properties within the W-2 area, which is
17 actually a fairly significant portion and the ballpark
18 site itself, of course, that's a purely significant
19 amount, you know, percentage of the entire Capital
20 Gateway area. So just those areas alone would be a
21 fair number of projects.

22 MS. MCCARTHY: So if you're looking at the
23 incremental number, it's not necessarily a number
24 beyond that, because the development along M Street
25 and the buildings along the waterfront would have

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1 already been before the Commission, a substantial
2 portion of what remains is large blocks that are the
3 stadium. So it's basically just what's along South
4 Capitol Street and slightly south of M and mostly goes
5 from what we have seen so far from property owners
6 coming in, there has been a substantial amount of
7 property assembly. So we're talking about fairly
8 large projects. But we can easily estimate based on
9 that what the total number of projects would be.

10 COMMISSIONER PARSONS: Can you estimate
11 how many we have already committed ourselves to on M
12 and the waterfront?

13 MS. MCCARTHY: Well, we know the U.S. DOT.
14 We know that at least two projects -- at least one
15 project within this specific area of this proceeding
16 is a matter-of-right, so other projects that have been
17 built already as a matter-of-right on the north side
18 of M Street, there are -- what was I going to say?

19 MR. LAWSON: I guess I would say right now
20 I know of three projects pending on M Street.

21 COMMISSIONER PARSONS: That need to come
22 before this, because we have already adopted these.

23 MR. LAWSON: Yes.

24 CHAIRPERSON MITTEN: I think what might be
25 helpful is giving us a sense of, as Mr. Parsons said,

1 what are we already sort of committed to, what would
2 be the incremental workload that we would be taking on
3 beyond what we have already committed to and then to
4 the extent that, following up on what Commissioner
5 Jeffries said, in what way could we possibly break it
6 down where we didn't need to do everything, but things
7 above a certain size, given what you know about what
8 is coming forward.

9 VICE CHAIR HOOD: Madam Chair?

10 MR. LAWSON: I'm sorry, Madam Chair.
11 We're just going to take a look at the map right now
12 and kind of try and come up with a building estimate
13 and right now, we're just kind of counting up squares
14 and it looks like there's probably about a dozen
15 squares that this would apply to, that where review
16 would apply to it, it doesn't already apply within the
17 Capital Overlay.

18 MS. STEINGASSER: Actually, not that much,
19 Madam Chair. There's four additional squares that
20 this would apply to that are not currently applied.
21 Are we talking down here?

22 CHAIRPERSON MITTEN: Okay.

23 MS. STEINGASSER: Anyway, that would be
24 about a dozen.

25 VICE CHAIR HOOD: Madam Chair, let me just

1 ask a question.

2 CHAIRPERSON MITTEN: Wait, wait, wait.

3 MS. STEINGASSER: Well, there is a map in
4 your report.

5 VICE CHAIR HOOD: If it will solve the
6 problem.

7 MS. STEINGASSER: And you can see that
8 it's everything --

9 CHAIRPERSON MITTEN: Mr. Hood seems to
10 have the answer.

11 VICE CHAIR HOOD: I have an answer. I
12 know something, but I haven't asked. Let me just ask,
13 have you looked at form-based coding that would be on
14 Reservation 13 and maybe that would kind of give some
15 predictability in this area, so we won't --

16 MS. STEINGASSER: We have not.

17 VICE CHAIR HOOD: -- increase the
18 workload?

19 MS. STEINGASSER: And I don't think this
20 would be a place where we would want form-based
21 coding.

22 VICE CHAIR HOOD: Okay. Well, I don't
23 have an answer then, but why not?

24 COMMISSIONER JEFFRIES: Yes, I would like
25 to know.

1 MS. STEINGASSER: Because there is no form
2 here that we're trying to extend or replicate. This
3 is a new neighborhood with an opportunity for new
4 types of expression and we're encouraging that. It's
5 also that new expression that we're thinking merits a
6 bit of a public review.

7 Form-based is we're using it and there's
8 Reservation 13 extending the neighborhood, the Capitol
9 Hill Neighborhood, the scale, the feel of that
10 neighborhood. That's not what we're doing down here.
11 We're creating new architectural expressions or we're
12 encouraging new architectural expressions.

13 COMMISSIONER JEFFRIES: So the form-based
14 codes are only for more existing or extensions of
15 existing, because I remember Matt Bell. He actually
16 spoke to us about that and I thought there was -- he
17 had a discussion around newer neighborhoods.

18 MS. STEINGASSER: It certainly could be,
19 but it would be -- I think it would be a very
20 laborious process to come up with a common design
21 philosophy for the area.

22 MS. MCCARTHY: Because, as you know, the
23 form-based building that we proposed for Reservation
24 13 was based on a relatively detailed plan along with
25 relatively detailed urban design considerations that

1 would have to be done before we could proceed with
2 doing form-based zoning on this site.

3 We would rather get some basic parameters
4 in place, including the setback from South Capitol
5 that the National Capital Planning Commission has
6 called for and the joint planning activities that we
7 have done with NCPC and AWC and the Office of Planning
8 and looked at the advisability of additional setbacks
9 on South Capitol Street.

10 We would like to get that in place now
11 before development proceeds. That's an important
12 placeholder and the same thing as if the density is
13 being transferred, some way of assuring that we'll
14 have some control over the combined lot development or
15 the transverse development rights, so that we can
16 assure that the impacts in terms of shadows and view
17 parameters can be taken into account.

18 CHAIRPERSON MITTEN: Anyone else with
19 questions? Mr. Parsons?

20 COMMISSIONER PARSONS: I assume that the
21 guidelines, excuse me, I'll phrase it differently,
22 that the setbacks that you're proposing are not
23 guidelines.

24 MR. LAWSON: That is correct. The
25 setbacks would be requirements.

1 COMMISSIONER PARSONS: That's something we
2 would negotiate in the design review?

3 MR. LAWSON: That's correct.

4 COMMISSIONER PARSONS: Thank you.

5 CHAIRPERSON MITTEN: What I would like to
6 suggest, just because this is -- well, first let me
7 say I think we're going to double, based on the number
8 of squares we're going to double what we're going to
9 see, but it would be relative to what we are committed
10 to see already. We'll about double it, you know, just
11 in terms of volume.

12 What I would like to see, I mean, I'm not
13 opposed to the general sense of these text amendments,
14 but rather than set down a concept, I would -- you
15 have gotten our directions and I would rather see the
16 text when you set it down, so that to the extent that
17 if we have a strong reaction on one component, we can
18 get that out of it, so that when we have a hearing,
19 it's as efficient as possible. I don't know how the
20 rest of the Commission feels about that. Mr. Parsons?

21 COMMISSIONER PARSONS: You mean as in next
22 month?

23 CHAIRPERSON MITTEN: Or whenever they can
24 draft the text.

25 COMMISSIONER PARSONS: Okay. I agree.

1 CHAIRPERSON MITTEN: So it would
2 effectuate these recommendations.

3 COMMISSIONER JEFFRIES: I guess I'm not --
4 I don't have a problem with us really setting it down
5 based on just some of the suggestions that we have
6 given tonight. I mean, I don't know if we'll
7 necessarily need to slow this down, but I would like
8 to hear from other people, but I just didn't
9 necessarily see a need to --

10 CHAIRPERSON MITTEN: Well, I guess what
11 I'm suggesting is not going to slow it down, because
12 they can't just go off their own and advertise
13 whatever text they feel like, so the Commission will
14 have to review the text when it's prepared. I would
15 just rather that like when we vote to set something
16 down that it's as concrete as possible. And we're
17 going to get to that point. I just would rather take
18 a vote when it's concrete than when it's abstract.

19 COMMISSIONER JEFFRIES: That's fine.

20 CHAIRPERSON MITTEN: And one thing that I
21 would like to suggest in terms of making more definite
22 guidelines, and I'm just speaking for myself, but
23 we'll see how bold you guys want to be, on the best
24 practice environmental design, if you wanted to
25 propose that these projects be LEED-certified, that's

1 pretty specific. So that's the kind of specificity
2 that I would like to see and that is something that
3 people can understand. Anyone else?

4 VICE CHAIR HOOD: Also, Madam Chair, I
5 would like to just add, I know you have already
6 commented on be of superior design quality, any kind
7 of way you can help us narrow that down. That's
8 really a moving target, but if you could come up with
9 just some specific guidelines other than be of
10 superior design quality, just break it down a little
11 more if you can and that may help us out with some
12 other things, too. Thank you.

13 MS. MCCARTHY: Okay. I think we can
14 certainly be more specific about those. The
15 Commission may want to think about a hybrid because,
16 as I mentioned, this notion of the view along South
17 Capitol Street is one that there is fairly general
18 agreement among the various planning bodies that have
19 looked at this area, and we know that there are a
20 number of development projects that are proceeding.

21 You know, if we're trying to establish a
22 uniform 15 foot setback and even one or two of those
23 go forward in the intervening period of time until we
24 nail down the specific language, we then lose the
25 benefit of the setback. So we may want to put the

1 setbacks and step backs down and then ask for more
2 specific language after that.

3 CHAIRPERSON MITTEN: What I was just
4 asking Mr. Bergstein about, and I would like him to
5 answer on the record, is in the text this is not bound
6 by the set down rule. Is that what you thought would
7 happen.

8 MS. MCCARTHY: We were proposing it as a
9 change to our map amendment, because it is an overlay.

10 MR. BERGSTEIN: It is. The first time I
11 think I can remember this type of substantial text
12 amendment to an overlay we never quite reached the
13 issue. Customarily, when there is a map amendment
14 proposed that is accompanied by an overlay text, every
15 part of that text is considered to be subject to the
16 set down rule.

17 The type of constraints that we're
18 suggesting that be imposed here would be consistent
19 with the type of constraints that you would want to
20 protect from the set down rule, because if there is
21 any period between the time that you're considering it
22 and the time you have finality to it, anyone who comes
23 in with building permits will be able to build without
24 being in accordance with this type of review.

25 So we have never reached the question. I

1 don't have a definitive answer to you. Certainly, if
2 this were included with the original overlay, it would
3 most definitely have been subject to the set down
4 rule. And since it's with a defined overlay within a
5 defined area, it could well be seen as that.

6 I was looking at the text of the actual
7 set down rule and it applies whenever the Zoning
8 Commission is considering an amendment to the zone
9 district classification of the site of proposed
10 construction, and I think that you would have to
11 consider whether or not this type of text amendment,
12 which is focused on the overlay, would actually be
13 seen as, in essence, changing the map designation
14 within the overlay itself, because it's adding a
15 greater degree to a very defined area.

16 CHAIRPERSON MITTEN: Who has the ultimate
17 call on that, DCRA, whether the set down rule applies?

18 MR. BERGSTEIN: I think these are your
19 regulations first and foremost to interpret, so I
20 think you would be able to say at this point whether
21 or not you believe the set down rule could apply or
22 should apply under the circumstances.

23 CHAIRPERSON MITTEN: Okay. So now that we
24 have that, let me just ask first. In the event that
25 we were to set down the setback portions of this,

1 would it be the Commission's interpretation that the
2 set down rule would apply or not before we decide how
3 to proceed?

4 I mean, I can certainly appreciate the
5 fact that we wouldn't want things to get away from us,
6 which is what happened along M Street. I just have
7 never thought about this before, because I thought
8 text amendments on their face would not --

9 MR. BERGSTEIN: Well, this is the first
10 time we have had one that -- again, it's as if -- how
11 the Office of Planning described it. It is described
12 as a text amendment and not a map amendment. The
13 alternative, if there's portions within this proposal
14 that you feel are important to put in place, you can
15 always do it as an emergency rule making in respect to
16 those specific provisions if you feel uncomfortable
17 saying that the entire text is subject to the set down
18 rule.

19 CHAIRPERSON MITTEN: The problem, I think,
20 is that if you impose it, and I haven't thought this
21 through entirely, but because we don't have specific
22 text, but it's just hard to -- I think it's hard to be
23 sure that we have thought all the implications
24 through, because we don't have -- we're not actually
25 modifying a specific section of the ordinance.

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1 I think what I would like to suggest is,
2 unless Mr. Parsons who has got his hand up -- what I
3 would like to suggest is that we -- to the extent that
4 the Office of Planning would like to put any of these
5 provisions in place on a faster track that will bring
6 us a text amendment that we could vote on in an
7 emergency basis that actually goes into the sections
8 of the ordinance that are to be modified, so that it
9 would be very clear what we have voted on and then the
10 Zoning Administrator won't be put in the position of
11 trying to understand something that perhaps we weren't
12 as clear as we could have been if we had thought
13 through which sections of the text we were actually
14 changing.

15 What do you guys think about that?

16 COMMISSIONER PARSONS: Well, excuse me,
17 but what I was going to ask is sort of the Office of
18 Planning who follows these things closely. Are we at
19 the point of people assembling property or are we at
20 the point of people who are designing projects?

21 If they are designing projects and we want
22 a setback along South Capitol Street and so forth, I
23 think we ought to let people know, and the way to do
24 that is to say we're going to impose that rule. It's
25 over.

1 MR. LAWSON: In answer to that question,
2 I guess, to some extent the answers we don't know,
3 because we don't know everything because there was so
4 much done on this possible by right right now. We
5 have heard discussions. We have had discussions with
6 people who are assuming properties. We have had other
7 discussions with people who have started the design
8 process or, for all we know, are into the design
9 process.

10 But because some of these areas allow such
11 a significant amount of density by right, they aren't
12 anticipating going through a PUD so, quite frankly,
13 they aren't talking to us, because they don't have to.
14 So we don't know the folks' end of what is going on
15 out there. Much of what we know is kind of secondhand
16 information or anecdotal, but from what we understand
17 it's considerable.

18 COMMISSIONER PARSONS: It seems to me the
19 setbacks are on Half Street. It's Half and South
20 Capitol, right?

21 MR. LAWSON: We're proposing setbacks on
22 Half Street and on South Capitol Street, yes.

23 COMMISSIONER PARSONS: This is something
24 we should impose instantly until we have the hearing.
25 Otherwise, we'll have a parade of people here with

1 designs and witnesses saying, you know, I'm already
2 designing this building and I can't make it work with
3 a notch back.

4 MR. LAWSON: Well, the problem --

5 CHAIRPERSON MITTEN: I guess what I was
6 suggesting is I don't think it's -- first of all, we
7 can take this up at a Special Public Meeting, you
8 know, at any time.

9 MR. LAWSON: Yes.

10 CHAIRPERSON MITTEN: And I wasn't
11 suggesting that this was going to be a protracted
12 process. I just think that I just don't want to be --
13 I want to act in an orderly fashion, I guess is what
14 I'm suggesting, and imposing a -- I mean, just as a
15 for instance, just as a for instance, in general we're
16 talking about a setback along South Capitol Street,
17 but because it doesn't modify, it hasn't been tagged
18 to a particular section, I mean, how is the Zoning
19 Administrator supposed to know that it applies to the
20 CG Overlay necessarily?

21 I know he knows in general that that's
22 what we're talking about, but it doesn't say modify a
23 section. You know what I'm saying?

24 COMMISSIONER HILDEBRAND: But in addition
25 to that, it would only cover half of South Capitol

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1 Street. The portion outside the gateway wouldn't have
2 the same setback requirement.

3 CHAIRPERSON MITTEN: I mean, this is
4 really just a matter of the way in which to proceed.
5 I'm not opposed to the substance of it.

6 COMMISSIONER HILDEBRAND: Okay.

7 CHAIRPERSON MITTEN: I'm just trying to
8 find the most orderly way in which to proceed, so I
9 just need some sentiment and just reminding of
10 whatever meaning the Commission has.

11 COMMISSIONER PARSONS: Well, we were going
12 to wait a month or whatever it takes to have language.

13 CHAIRPERSON MITTEN: But you were
14 suggesting that we act tonight.

15 COMMISSIONER PARSONS: Oh, no, no, I'm
16 sorry. I didn't mean that.

17 CHAIRPERSON MITTEN: Okay.

18 COMMISSIONER PARSONS: It had to do with
19 the issue of whether we're going to --

20 COMMISSIONER HILDEBRAND: Well, would it
21 be possible for the Office of Planning to have that
22 specific portion drafted by a Public Hearing on the
23 21st? I think we're having our --

24 CHAIRPERSON MITTEN: Public Meeting.

25 COMMISSIONER HILDEBRAND: -- Public

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1 Meeting on the 21st anyway.

2 MS. McCARTHY: Yes. I mean, Mr. Lawson
3 has indicated he has already begun the specific --
4 identifying the specific provisions that have to be
5 modified.

6 CHAIRPERSON MITTEN: That will be great.

7 MS. McCARTHY: So we could have that done.
8 We couldn't have the detailed criteria done by then,
9 but we could have the detailed setback and setback
10 provisions done.

11 CHAIRPERSON MITTEN: I think that would be
12 great. I mean, I just wouldn't feel more comfortable
13 proceeding that way.

14 COMMISSIONER JEFFRIES: And looking at
15 those individual items, we're not getting ahead of
16 ourselves in terms of just looking at those like
17 setback provisions. I mean, we'll need to look at
18 this in a larger context type. I mean, is there a
19 concern there?

20 MS. McCARTHY: The recommendations we're
21 making are based on the larger context.

22 COMMISSIONER JEFFRIES: Okay.

23 MS. McCARTHY: Context of both the NCP
24 study --

25 COMMISSIONER JEFFRIES: Okay.

1 MS. McCARTHY: -- and the study said the
2 Anacostia Waterfront Corporation has done and are
3 about to release as public documents, so there has
4 already been considerable contextual work done.

5 COMMISSIONER JEFFRIES: Okay. So we'll
6 just -- the other parts will come later. These will
7 just be first, but they are all sort of together, so
8 okay. Great.

9 MS. McCARTHY: Right.

10 CHAIRPERSON MITTEN: Okay. So then we
11 have a Special Public Meeting on whatever you choose
12 to bring to us on Monday the 21st at 6:00 for this and
13 then the balance of it we'll take up at the point when
14 you get the text written on the design guidelines and
15 so on. Okay. Anything else on 05-10? All right?

16 Next is Case No. 05-30. This is a
17 consolidated PUD and related map amendment request by
18 the West*Group Development Company, LLC. Ms. Thomas?

19 MS. THOMAS: Good evening, Madam Chair,
20 Members of the Commission. I am Karen Thomas with the
21 Office of Planning. OP is recommending set down of
22 the West*Group Development Company's proposal for a
23 consolidated Planned Unit Development and Related Map
24 Amendment for the development of, approximately, 11.5
25 acres into the ** District. The development will

1 consist of a mix housing types, including single-
2 family detached dwellings, four houses, and those are
3 family dwellings, with a 10,000 square feet **.

4 ** open space features will be provided
5 around the new development. The overall site is
6 composed of a number of lots, including a larger lot,
7 which is ** parcel bounded by Rittenhouse Street, New
8 Hampshire Avenue, Peabody Street, Chillum Place and
9 Sligo Mill Road, N.E. The multiple lots are Square
10 3714, are located across Peabody Street, south of the
11 larger parcel.

12 Both sides are currently zoned R-1-B and
13 the larger parcel is developed with vacant buildings,
14 which previously housed a nursing home and offices for
15 MedStar Health. The proposed map amendment would
16 rezone the site from R-1-B to R-5-A which allows Land
17 Use Map which recommends the subject site for low
18 density residential.

19 However, the proposed density for the site
20 at 17 units per acre places it between the R-2 and the
21 R-3 density of 14 units per acre and 22 units per
22 acre, respectively. And we support the proposal as
23 being within the limits of the range for the lower
24 density single-family zoned districts. Therefore, OP
25 believes that developing the intent of the

1 Comprehensive Plan and objectives and the density for
2 the site is well within the range that could be
3 supported by the Land Use Map.

4 199 residential units are proposed on 55
5 lots with a variety of housing, including single-
6 family, townhouse and apartments designed to cater to
7 residents of varying income levels. Flexibility would
8 be required from several provisions of the Zoning
9 Regulations, including the lot occupancy, side yard
10 requirements for townhomes and single-family
11 residences, FAR requirements for the proposed
12 townhomes and relief from sections 410 and 2516 of the
13 Zoning Regulations for the townhomes to be considered
14 as groups of single buildings.

15 For the overall site, the total lot
16 occupancy, the floor area ratio and the number of on-
17 site parking are well within the range of the
18 permitted requirements. Amenities provided by this
19 project will be an attractive and functional
20 residential community that promotes homeownership with
21 a variety of housing types to encourage long-term
22 residency and increase neighborhood stability.

23 The project proposes 10 affordable units
24 integrated throughout the development and affordable
25 criteria will be targeted towards families and

1 individuals whose annual incomes are less than 80
2 percent of the area median income. The condominium
3 building will be restricted to residency by persons 55
4 years and older, and the building will be handicapped
5 accessible with other features to facilitate
6 independent living.

7 OP will continue to encourage the
8 developer to increase their affordable housing proffer
9 to provide a more equitable balance against the
10 requested relief and density increase. We believe
11 that the applicant is getting twice the number of
12 residences that would be allowed under R-1-B Zone,
13 which is approximately 360,000 square feet and then
14 with 257,000 square feet of density.

15 We have asked the applicant to submit
16 additional info prior to the Public Hearing for
17 further review, including highlighting all the units
18 that do not meet the yard and other requirements,
19 provision of the First Source Agreement with the
20 Department of Employment Services and a Memorandum of
21 Understanding with the Office of Local Business
22 Development.

23 For the reasons outlined in our report, we
24 would recommend that the Commission schedule this
25 application for a Public Hearing, and this concludes

1 my report. Thank you.

2 CHAIRPERSON MITTEN: Thank you, Ms.
3 Thomas. Questions from the Commission? Mr. Hood?

4 VICE CHAIR HOOD: Ms. Thomas, just a
5 question. I believe that this site has a slope in it.
6 Am I correct? I guess I would say about 45 degrees.

7 MS. THOMAS: Yes, definitely.

8 VICE CHAIR HOOD: I'm looking here on S13
9 and I believe the single-family homes face New
10 Hampshire Avenue. I just want to make sure I'm right,
11 because I don't read these very often and I may make
12 a mistake.

13 MS. THOMAS: Yes, the single -- some of
14 the single-family homes face New Hampshire.

15 VICE CHAIR HOOD: Okay. So the backs are
16 going to be at that slope when you come in. The
17 single-family homes would have basements, right?

18 MS. THOMAS: I'm not quite sure.

19 VICE CHAIR HOOD: Okay. Well, let me just
20 throw it out there, so if it's set out for hearing,
21 I'm concerned about the drainage. I see at the top of
22 the slope, which is Sligo Mill Road, N.E. At the top
23 I see a few sites where there's going to be a proposed
24 storm drain, proposed storm drainage, but my concern
25 is the New Hampshire Avenue side and those families

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1 who will be having those basements. I'm not sure how
2 the water is going to run off and that's my concern,
3 and I'm just saying this just in case it's, you know,
4 set down.

5 MS. THOMAS: Okay. I will have the
6 applicant address that.

7 VICE CHAIR HOOD: All right.

8 CHAIRPERSON MITTEN: Okay. Mr.
9 Hildebrand?

10 COMMISSIONER HILDEBRAND: When I first
11 looked at this, I was trying to figure out how could
12 this be considered low density residential
13 development. It's exceeding by twice what R-1-B would
14 allow and I pulled out the aerial photographs that you
15 provided as part of your report and compared it to the
16 surrounding neighborhood, and I don't see anything in
17 the surrounding neighborhood that comes close to this
18 density.

19 MS. THOMAS: We understand that the
20 density is increased, but we did agree that the
21 applicant's statement, when it was broken down into
22 number of units per acre for the site, it fell right
23 between the R-2 and the R-3 density of the 17 units
24 per acre where the R-2 is about 14 units per acre and
25 the R-3 is 22 units per acre. So in that respect, we

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1 believe that we can support it as being within the
2 limits of that range of a single-family zone district.

3 COMMISSIONER HILDEBRAND: And it also
4 seems that when you were looking at their lot
5 occupancy calculations that they were including the
6 roadways and alleyway system as part of their lots.
7 Is that correct or is that why their lot coverage is
8 so low, because otherwise it seems like what would
9 typically be a saleable lot is significantly smaller
10 than what would customarily be allowed.

11 MS. THOMAS: There are private drives that
12 are being considered.

13 COMMISSIONER HILDEBRAND: So this is going
14 to be treated as common space and you will have a
15 condo fee to maintain it?

16 MS. THOMAS: Yes, it's private. It's
17 being considered as a private development of private
18 streets, yes.

19 COMMISSIONER HILDEBRAND: This is not a
20 gated community, is it?

21 MS. THOMAS: No, it's not. The road is to
22 provide connectivity from --

23 COMMISSIONER HILDEBRAND: They appear, for
24 all intents and purposes, to be public streets and
25 public alleys.

1 MS. THOMAS: Pardon?

2 COMMISSIONER HILDEBRAND: They give the
3 appearance of being public streets and public --

4 MS. THOMAS: Yes. Yes, they do.

5 COMMISSIONER HILDEBRAND: -- alleys.

6 MS. THOMAS: Yes.

7 COMMISSIONER HILDEBRAND: My first concern
8 is that it just seems to be too dense particularly
9 compared to a surrounding neighborhood.

10 CHAIRPERSON MITTEN: Along that line, if
11 I may, has the Office of Planning done calculations of
12 density without including the private streets in the
13 calculation, because I think that's why Commissioner
14 Hildebrand is reacting the way he is when he compares
15 this to the aerial, because I had the same reaction,
16 which is I think if you eliminate those from the
17 calculations, you could find that it's quite
18 different.

19 MS. THOMAS: We can look at that and
20 provide some figures on that. We haven't done that as
21 of yet.

22 MS. STEINGASSER: If we did take out -- in
23 our last, final paragraph where we talk about
24 encouraging the developer to increase their affordable
25 housing proffer, we did estimate a 20 percent decrease

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1 in land area for the roads, so that that's square
2 footage in pure numbers, but we did not go through and
3 recalculate the lot occupancy, but we'll ask the
4 developer to prepare those data for you.

5 CHAIRPERSON MITTEN: Well, another thing
6 I wanted to throw out -- I'm sorry, Mr. Hildebrand,
7 were you done?

8 COMMISSIONER HILDEBRAND: Please, go
9 ahead. I may have another.

10 CHAIRPERSON MITTEN: Okay. You had asked
11 the applicant on the bottom of the first page of your
12 report to highlight all the units that do not meet the
13 yard and other zoning requirements. Whereas, the
14 applicant seems to be asking, at least on page 9 of
15 their submission, that they want flexibility under
16 sections 410 and 2516 and even having to -- I don't
17 know if they want flexibility to comply or they want
18 flexibility to not even depict that.

19 But I guess I just wanted to know what is
20 your understanding about how they are going to be
21 showing individual lots or are they going to be?

22 MS. THOMAS: Well, they provided a -- you
23 can actually see the breakdown of the side yards and
24 the yards where they needed relief. But what I'm
25 going to do, which I think will be helpful for the

1 Commission, would be to actually see those units,
2 where they are located, were they asking for relief or
3 the flexibility from the yard requirements, so you can
4 actually see where they are located and which units
5 are just generally asking for it.

6 CHAIRPERSON MITTEN: And I think we need
7 to go a little bit further than that. They seem to
8 have these types of lots and if you look on these
9 sheets, I mean, it's on a couple of different ones,
10 but the proposed circulation plan, it's showing types,
11 but it doesn't show the parameters of the lots and how
12 they would even be measured. So given that we don't--
13 or unless I missed something.

14 MS. THOMAS: There is a diagram of the
15 proposed site plan. It's just not large enough and I
16 did ask them to provide that and I would hope that at
17 the Public Hearing that they would provide it. This
18 key is too small for the diagram.

19 CHAIRPERSON MITTEN: You're going directly
20 to SR3. Oh, I see.

21 COMMISSIONER HILDEBRAND: I guess the
22 question comes up. When these units are sold, are
23 they selling a portion of the street as part of the
24 front yard for a townhouse or is the alley becoming
25 part of the backyard of the townhouse?

1 MS. STEINGASSER: No, the alleys and the
2 streets would be Homeowner Association responsibility
3 like most suburban townhouse developments, it's part
4 of the common land, common space.

5 And the properties themselves are detailed
6 in this sheet here where they give the dimension, the
7 lot area and the different -- they go through a series
8 of the lots by type and then they tell you where they
9 are. But you would own a small parcel, is my
10 understand, as a condominium owner with a joint
11 responsibility for the open space, whether it's
12 recreational green space or the streets and alleys.

13 MS. MCCARTHY: And we should add while the
14 streets aren't -- they are not parks, that's for sure,
15 but they do contribute to the sense of openness of the
16 project and we strongly encourage the applicants not
17 to make it a gated community, not to have super
18 blocks, to make it porous and to fit in at a scale and
19 a character not unlike the neighborhood in terms of,
20 you know, having good circulation through the site and
21 making these look like public streets, in that, that
22 way it wouldn't feel like it was some sort of gated
23 community apart from the rest of the neighborhood.

24 COMMISSIONER HILDEBRAND: Well, I
25 certainly understand the philosophy of putting the

1 larger single-family homes along the major streets and
2 avenues to give a buffer, but instead of looking
3 through to garden space, which you do in all the rest
4 of the surrounding neighborhood, in this particular
5 area you're going to look through and see another
6 house in someone's backyard. I'm not exactly sure how
7 successful that philosophy is actually going to work
8 out.

9 MS. STEINGASSER: Part of the idea when we
10 encouraged the developers to put the single-family
11 houses is not create a buffer, but to relate to like
12 to like, so that these were facing single-family and,
13 thus, the density is contained within the project.
14 I'm not sure it was done as a design buffer in any
15 way.

16 CHAIRPERSON MITTEN: Anyone else? Mr.
17 Parsons?

18 COMMISSIONER PARSONS: I find this very
19 troubling. I can't get by this idea that this is a
20 design buffer. It's exposing single-family
21 residential around the exterior and then containing
22 this almost dental-like density, I mean, a lot of
23 these lots don't even have yards when you look at the
24 aerial photograph of the neighborhood and that's a
25 characteristic of the neighborhood. I just think it's

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1 much too dense and I'll certainly emphasize that in
2 the hearing.

3 Now, I would like to ask about the small
4 condominium building. I will use Schilling Place as
5 an address, but in the northwest corner what is that,
6 a new building? Why aren't there single-family
7 residential units in that location to continue the
8 buffer?

9 MS. THOMAS: That property is part of the
10 existing buildings, the two existing buildings that
11 are on this parcel, and instead of tearing those
12 buildings down, they are proposing to retrofit them.

13 COMMISSIONER PARSONS: Oh, I see. Okay.

14 MS. THOMAS: Yes.

15 COMMISSIONER PARSONS: Now, these parks
16 seem to be lids over storm water retention devices.
17 Is that correct?

18 MS. THOMAS: Yes.

19 COMMISSIONER PARSONS: And there is no
20 design for the parks as part of this submission?

21 MS. THOMAS: No design for the parks?

22 COMMISSIONER PARSONS: Correct. We don't
23 know what's going to be in the parks.

24 MS. THOMAS: They are proposing
25 landscaping with trees and -- well, throughout the

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1 development site they are also proposing to have that
2 as the trees --

3 COMMISSIONER PARSONS: Well, surrounding
4 it in fall colored trees are three parks, as I see it.
5 I assume they are common, open space parks. Is that
6 correct?

7 MS. THOMAS: Yes.

8 COMMISSIONER PARSONS: Well, I certainly
9 think we should have designs of what those are going
10 to look like, because --

11 COMMISSIONER HILDEBRAND: Is that a storm
12 water management system?

13 COMMISSIONER PARSONS: Yes.

14 COMMISSIONER HILDEBRAND: Or is that a
15 parking lot?

16 COMMISSIONER PARSONS: No, that's -- well,
17 I looked at the grading plan and it shows it with a
18 storm water retention facility.

19 COMMISSIONER HILDEBRAND: But is that
20 surface parking in that center?

21 COMMISSIONER PARSONS: Well, it may be,
22 but it's also a storm water. Take a look at the S13
23 and you'll see the same final configuration.

24 MS. THOMAS: I don't have any indication
25 that this was a surface parking.

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1 COMMISSIONER PARSONS: Okay. All right.
2 But, you know, we have got floor plans of the houses,
3 but we need some floor plans for what the park spaces
4 are going to look like, because this is not a fresh
5 state. This is consolidated, correct?

6 MS. THOMAS: That's correct.

7 COMMISSIONER PARSONS: Well, it seems to
8 me to be a foreign object in this community and you
9 state in your report that the ANC has not yet weighed
10 in on this.

11 MS. THOMAS: They met in a formal meeting
12 on it. I have nothing in writing as of yet.

13 COMMISSIONER PARSONS: Have we got any
14 signals?

15 MS. THOMAS: Pardon?

16 COMMISSIONER PARSONS: Have we got any
17 signals?

18 MS. STEINGASSER: Well, overall, the
19 community and the ANC supported the project. They
20 were uncomfortable with the fact that it included a
21 map amendment to enable the project, but the project
22 on itself they did come to consensus on in support.

23 COMMISSIONER PARSONS: Really?

24 COMMISSIONER JEFFRIES: What does that
25 mean?

1 MS. STEINGASSER: They supported the
2 project as you see it.

3 COMMISSIONER JEFFRIES: With this level of
4 density?

5 MS. STEINGASSER: With this level of
6 density, with their use of the buildings, with the
7 single-family houses and the parks and the connection
8 of the streets. As a matter of fact, they were very
9 concerned about that the streets be broken and not
10 continue through to create -- to route the traffic
11 into their neighborhoods. They wanted it kind of
12 broken and diverted.

13 When the Notice of Intent to file a PUD
14 arrived, they were concerned that it included the map
15 amendment. They didn't understand that it also
16 involved a map amendment to an R-5 zone.

17 CHAIRPERSON MITTEN: To rezone.

18 MS. STEINGASSER: And they had -- that has
19 been an issue for them, but they liked the project as
20 they saw it.

21 MS. MCCARTHY: I believe the ANC had no --
22 you look a little puzzled, Mr. Parsons. I believe the
23 ANC had not seen a project that included a PUD in
24 which there was a map change as part of that, so they
25 were concerned that this looked like the zoning was

1 being changed and they were afraid was the zoning
2 being changed in their neighborhood. And so there is
3 some explanation being provided that no, the map
4 change is specifically tied only to this project and
5 would not apply to anything else that would be built
6 or anything that is outside those boundaries.

7 COMMISSIONER PARSONS: My puzzlement is
8 that they even like this.

9 MS. MCCARTHY: Well, the developer
10 explains part of that support in terms of saying that
11 the people who live in this neighborhood are cognizant
12 of the fact that because of the large single-family
13 homes, they know that their children who have grown up
14 in this neighborhood can't afford to live in this
15 neighborhood. And their suggestion was that by
16 providing a range of housing types from single-family
17 houses to condominium units, they were able to serve
18 a broader range of housing demand and allow a greater
19 diversity to occur in the neighborhood than would be
20 the case if they had just done a series of single-
21 family houses.

22 COMMISSIONER JEFFRIES: I tell you that
23 that sounds -- this is a very unique neighborhood,
24 because the time that I have been in this Commission,
25 it's always in reverse. I mean, you know, these

1 neighborhoods that are so concerned that there is more
2 density and particularly vehicular traffic so, I mean,
3 this is good news. It just seems to be a little
4 counterintuitive to what we have seen here, at least
5 what I have seen.

6 You know, I think it's a very ambitious
7 project and, you know, obviously, I mean, I like the
8 fact that, you know, we're trying to introduce more
9 housing in the District, but I do think that this
10 aerial view does show that it's a tough site to
11 reconcile with this level of density.

12 You know, I am still having difficulty not
13 looking at this as some sort of suburban compound. I
14 just -- you know, if I live on Peabody Place, I guess
15 I wouldn't live on Peabody Place, but if I lived on
16 Sligo Place and I had friends, like, come visit me, I
17 mean, it would be difficult to perhaps get there.

18 I guess they can figure it out, but it's
19 just -- and I do appreciate the single-family on the
20 perimeter and so forth. It's funny. I would have
21 gone in the opposite direction of this community as it
22 related to, you know, continuing the grid of the
23 District.

24 You know, I'm willing to go forward and
25 set this down, but I do think that there definitely

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1 needs to be some discussion around the density of this
2 project and I have a question.

3 Is there any examples of large scale
4 completed projects such as this in the District that,
5 you know, are surrounded by very low density and has
6 sort of introduced this level of density?

7 MS. STEINGASSER: There's Harrison Square
8 to a certain extent, but it's a higher density. Yes,
9 but it's a higher density neighborhood around, you
10 know, off of U Street.

11 COMMISSIONER JEFFRIES: Yes.

12 MS. STEINGASSER: Then there is the case
13 here.

14 CHAIRPERSON MITTEN: One that comes to
15 mind for me would be Foxhall Crescent.

16 COMMISSIONER HILDEBRAND: Yes. That's
17 exactly what I was thinking, too.

18 CHAIRPERSON MITTEN: Yes.

19 COMMISSIONER JEFFRIES: I mean, I'm not
20 familiar with it. How does it --

21 COMMISSIONER HILDEBRAND: I think it's a
22 lower density than this, but it was fitting into a
23 really hilly neighborhood and they had to do
24 serpentine streets and ended up with these cul-de-sacs
25 with curvo-linear facades in order to -- and I think

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1 they put in mostly duplexes there.

2 CHAIRPERSON MITTEN: So what it feels like
3 if you drive up Foxhall Road and you turn off into
4 this, it feels really packed is how it feels.

5 MS. MCCARTHY: Partly due to the scale of
6 the mansions that are in there.

7 CHAIRPERSON MITTEN: Maybe something more
8 comparable is Hillendale and that is something that we
9 wanted to avoid in terms of it being very gated and
10 very closed off from the community around it.

11 COMMISSIONER JEFFRIES: And my other
12 comment is, you know, the level of affordability. You
13 note that in your proposal. I would imagine that the
14 pricing on this housing, you know, would be, you know,
15 probably much different than, you know, Shaw and
16 Columbia Heights and so forth, so there might be some
17 level of affordability anyway. But, you know, given,
18 you know, the general size of this, to see 10 units be
19 affordable just seems to be, you know, not quite in
20 balance.

21 CHAIRPERSON MITTEN: What I think I would
22 like to see is some additional, what I already asked
23 for, which is a calculation of, basically, what would
24 be the density against an area that is out the street.
25 There is also a calculation that actually shows us how

1 much of this project is going to be green space.
2 Because even if it's -- you know, looking at the
3 proposed site plan that shows the rear yard landscape
4 area, which in some rear yards is not very much, and
5 if you were to color in the open space if, in fact,
6 you know, it is going to be landscaped, there is not
7 a whole lot of green space in this project. So I
8 think that's another thing that we need to have
9 quantified for us.

10 COMMISSIONER HILDEBRAND: One technical
11 thing, Madam Chair. If we look on S03, there is a
12 zoning lot that is Lot E that is off of Peabody
13 Street, N.E., and this is something that I have been
14 dealing with with the Board of Zoning Adjustment some,
15 as well, but the concept that a trellis can be used to
16 join two stand-alone buildings and, thus, create a
17 single building for zoning purposes, I do not find
18 anything in the Zoning Regs to support that and I
19 would like to get that addressed by the applicant if
20 this moves forward.

21 CHAIRPERSON MITTEN: I think that's
22 appropriate and hopefully doing something about
23 eliminating that potential for that interpretation in
24 the future. Anyone else?

25 COMMISSIONER JEFFRIES: It might be

1 helpful, perhaps maybe it's here, a nice cross
2 section. Well, actually, no, because really the
3 density is really horizontal and these are existing
4 buildings here. And, Vice Chair Hood, in terms of the
5 slope, the slope is sloping down towards New Hampshire
6 Avenue. Is that your --

7 VICE CHAIR HOOD: Yes.

8 COMMISSIONER JEFFRIES: Oh, okay. Yes,
9 that's --

10 CHAIRPERSON MITTEN: Anyone else?

11 COMMISSIONER HILDEBRAND: Yes. One other
12 thing is is there a problem with the proximity of
13 Rittenhouse Place with the intersection of Rittenhouse
14 and New Hampshire Avenue? I'm not sure what the
15 planned use level is of that road, but it seems to be
16 one of the major streets through the development and
17 it's a very short distance away from a fairly major
18 intersection. I didn't know if DDOT had commented on
19 that or would comment on that.

20 MS. THOMAS: I believe DDOT is going to be
21 working with the applicant concerning some
22 signalization of this intersection here.

23 CHAIRPERSON MITTEN: Have you had any
24 preliminary conversations with DDOT, because my
25 recollection is when we have cases where applicants

1 are proposing either to not -- either to have a
2 private street, first of all, that DDOT doesn't
3 support that generally, and that when they do, they
4 want the streets built to the same standard, so that
5 it could be a public street sometime in the future.
6 Have they weighed in on that yet?

7 MS. THOMAS: I believe they are being
8 built to DDOT's roads and the alleys, they are being
9 designed to DDOT's standards in terms of the widths of
10 the alleys and the streets, yes. This will be sent,
11 I believe, to follow with respect to the turning
12 radius, I understand, because they require at least 26
13 feet, so we do have to look at that as well.

14 CHAIRPERSON MITTEN: Okay. All right.
15 Anyone else? We have a recommendation from the Office
16 of Planning to set down Case No. 05-30 and I would so
17 move. Can I get a second or not?

18 VICE CHAIR HOOD: I'll second it.

19 CHAIRPERSON MITTEN: Thank you, Mr. Hood.
20 Okay. Further discussion? All those in favor,
21 please, say aye.

22 COMMISSIONER JEFFRIES: Aye.

23 VICE CHAIR HOOD: Aye.

24 CHAIRPERSON MITTEN: Aye. Those opposed,
25 please, say no.

1 COMMISSIONER HILDEBRAND: No.

2 COMMISSIONER PARSONS: No.

3 CHAIRPERSON MITTEN: Mrs. Schellin, would
4 you record the vote?

5 MS. SCHELLIN: Staff would record the vote
6 4-1-0 to set down Zoning Commission Case No. 05-30.

7 CHAIRPERSON MITTEN: We had two nays. We
8 had Mr. Hildebrand and Mr. Parsons.

9 MS. SCHELLIN: I'm sorry. Staff would
10 record the vote 3-2-0 to set down Case No. 05-30,
11 Commissioner Mitten moving, Commissioner Hood
12 seconded, Commissioner Jeffries in favor,
13 Commissioners Hildebrand and Parsons against.

14 CHAIRPERSON MITTEN: Thank you. Next is
15 Case No. 05-28, which is the Parkside Residential, LLC
16 1st Stage PUD and related map amendment. Mr. Lawson?

17 MR. LAWSON: Me again. Thank you, Madam
18 Chair. Once again, for the record, my name is Joel
19 Lawson. I am from the D.C. Office of Planning.
20 Parkside Residential, LLC submitted a map amendment
21 and a 1st Stage PUD application to permit the
22 construction of the new multi-building mixed-use
23 development on Kenilworth Avenue, N.E.

24 The site is located in Ward 7 and there is
25 adjacent to Kenilworth Avenue, S.E., a large Pepco

1 plant, park space along the Anacostia River and low
2 density residential developments. On the opposite
3 side of Kenilworth Avenue is the existing downtown for
4 the surrounding neighborhood with relatively low
5 density commercial establishments lining Minnesota
6 Avenue, S.E. The Minnesota Avenue Metro Station is
7 also located across Kenilworth Avenue. There is a
8 pedestrian connection across the street, but it is
9 considered inadequate.

10 The entire area of the site included in
11 this proposal is about 15.5 acres. At its center are
12 about 100 existing townhomes not part of this
13 application constructed in the 1990s as part of the
14 preliminary phase of development of the Parkside site.

15 The applicant is proposing to develop the
16 remainder of the site with 2.3 to 2.6 million square
17 feet of residential development, which translates into
18 about 1,500 to 2,000 units in a mixture of high and
19 low rise buildings with a height of up 130 feet, up to
20 750 square feet of office space in two connected
21 buildings to a height of 130 feet on Kenilworth
22 Avenue, S.E., 50,000 square feet of ground floor
23 retail development along the main pedestrian accessway
24 to and through the site, and developing community park
25 space at the center of the site.

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1 To accommodate this level and form of
2 development, the applicant is seeking to establish CR
3 and C-3-C Zoning, which would allow the building
4 massing to support this development scheme. These
5 zones would permit the proposed heights and densities
6 significantly in excess of that proposed. Existing
7 zoning even with a PUD would not provide for the
8 contemplated height or density.

9 The project would conform to the proposed
10 base FAR announced and would conform to the PUD height
11 limits. Although OP supports the provision of a new
12 mixed-use development on this site and some additional
13 height and density appears warranted, the CR and the
14 C-3-C Zoning proposed by the applicant would allow
15 greater height and density than needed or contemplated
16 by the comprehensive plan and would potentially set a
17 precedent for or expectations of higher densities and
18 heights in the non-downtown areas, such as these are
19 zones which are currently located exclusively -- oh,
20 sorry, these zones, the proposed zones, are currently
21 located exclusively in land within or adjacent to the
22 downtown core.

23 As such, OP has proposed alternative
24 zoning, which would provide for the amount of density
25 desired by the applicant without limiting height. For

1 most of the land, OP is proposing C-3-A, a zone that
2 permits residential and commercial development which
3 currently exists directly across Kenilworth Avenue
4 from the site. This zone permits a height of 90 feet
5 through the PUD process and would allow an amount of
6 residential and commercial development.

7 For the core "office/commercial" component
8 along Kenilworth Avenue, OP is proposing CR Zoning,
9 which would allow some additional height, 110 feet, to
10 allow the desired office density in a smaller and more
11 compact footprint. OP is recommending that the Zoning
12 Commission set down the OP zoning option in the
13 alternative, so that both the applicants and OP's
14 suggested zoning can be fully considered by the
15 neighborhood and by the Commission.

16 With regards to the amenity package,
17 evaluation is normally based on an assessment of the
18 additional development gained through the application
19 process. In this case over 1.8 million square feet of
20 building area and after 65 additional feet of height
21 for development along Kenilworth.

22 The amenity package, as proposed by the
23 applicant, includes urban design, improved vehicular
24 and pedestrian access, affordable housing,
25 participation in the First Source Employment Program

1 and utilization of local business enterprises in the
2 project development.

3 As noted in the OP report, additional
4 amenity package detail is required prior to the
5 hearing and OP will continue to coordinate discussions
6 on these issues. In particular, details regarding the
7 affordable housing component is required and
8 additional discussion with DDOT and other relevant
9 agencies regarding improving vehicular and pedestrian
10 access is needed.

11 The DDOT Kenilworth Avenue Study currently
12 in process will be available prior to the public
13 hearing. DDOT in preliminary discussions has also
14 recommended that the applicant consider providing a
15 contribution towards the replacement of the pedestrian
16 overpass, which is a vital aspect of their proposal.

17 OP has also encouraged the applicant to
18 further investigate environmental design practices to
19 lessen the impact of the development on existing
20 infrastructure and to improve the quality of the
21 environment for residents.

22 In summary, the Office of Planning is very
23 supportive in concept of the completion of the
24 Parkside neighborhood development. The development
25 will add new residential, employment and park space

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1 opportunities in the area. With resolution of access
2 issues, this development will be a benefit to
3 neighborhood residents and to the District as a whole.
4 The project is generally consistent with the goals and
5 objectives outlined for the area in the Comprehensive
6 Plan and its zoning for the area.

7 As such, OP recommends that this
8 application be set down for Public Hearing with OP
9 proposed zoning advertised in the alternative. This
10 concludes my testimony and I'll be available for
11 questions. Thank you.

12 CHAIRPERSON MITTEN: Thank you, Mr.
13 Lawson. Questions for Mr. Lawson or comments on the
14 proposal?

15 COMMISSIONER JEFFRIES: Okay. I'll start.
16 Well, first of all, I'm happy to see that this is a
17 1st Stage PUD. There is a lot to chew on here. I
18 have a couple of questions. I might have a few more
19 questions, but the development program calls for
20 almost 750,000 square feet of office space and also,
21 to sort of accommodate that, we're looking at a CR
22 Zone. Is that correct?

23 MR. LAWSON: OP is proposing a CR Zone.
24 The applicant has proposed C-3-C for that site.

25 COMMISSIONER JEFFRIES: And could someone

1 perhaps look at that as like spot zoning of some sort?
2 I mean, I'm asking. I mean, I don't know.

3 MR. LAWSON: I don't believe so. This is
4 part of a PUD.

5 CHAIRPERSON MITTEN: Could you turn your
6 mike back on?

7 MR. LAWSON: Oh, I'm sorry. I don't
8 believe so. This is considered -- this is part of a
9 PUD application.

10 COMMISSIONER JEFFRIES: Okay.

11 MR. LAWSON: This zoning is taken in
12 entirety, I guess, for the entire section.

13 COMMISSIONER JEFFRIES: Okay. So if you
14 wanted to look at a particular footprint or a larger
15 development without a PUD in it, it's perfectly fine
16 just to carve out that piece just to accommodate a
17 particular use?

18 MR. BERGSTEIN: Mr. Jeffries, spot zoning
19 only occurs when there is a small wrenching of land
20 from the surrounding Zone Plan and that it's
21 inconsistent with the Comprehensive Plan. So since
22 there is a finding, I believe, that this would be
23 consistent with the Comprehensive Plan, one of the two
24 elements of spot zoning is not met.

25 COMMISSIONER JEFFRIES: Okay. Okay.

1 That's fine. I thought it was. And I guess as it
2 relates to the 750,000 square feet, any thoughts in
3 terms of has the applicant talked about potential
4 office users for this?

5 MR. LAWSON: They have. To the best of my
6 knowledge, they haven't secured a user for that space.
7 I think they are looking for one large user for that
8 space, as opposed to multiple small officer users.

9 COMMISSIONER JEFFRIES: A governmental
10 tenant perhaps?

11 MR. LAWSON: I think so, yes.

12 MS. MCCARTHY: Yes. The Office of
13 Planning has verified that it's one of the sites that
14 is being considered by the Government Printing Office.

15 COMMISSIONER JEFFRIES: Okay.

16 MS. MCCARTHY: Who wants to move from its
17 current site and would like to remain in the District
18 and would like to be by a Metro Station, so this site
19 would very well meet those needs, but they have not
20 chosen a final site yet.

21 COMMISSIONER JEFFRIES: Oh, okay. Okay.
22 That's it.

23 CHAIRPERSON MITTEN: Anyone else? Mr.
24 Hildebrand?

25 COMMISSIONER HILDEBRAND: Actually, yes.

1 I hate to be the one that keeps saying wow, this is
2 really big, but wow, this is really big. I'm looking
3 at the rendering in Exhibit A and I think the graphic
4 is very compelling, but I struggle to count the
5 stories up in the perspective and I'm on this front
6 highway edge and I'm counting, you know, perhaps seven
7 stories and then you add another story or two for the
8 trees and I'm getting up to 11.

9 And then I look at the site plan and it
10 says no, that's a 13 story building. And I look at
11 the office building and I count nine stories and I
12 look at the site plan and it says no, that's a 13
13 story building. So there is a big disconnect between
14 the graphic that is being portrayed in perspective and
15 what is being called for in the plan.

16 I am much more convinced by the
17 perspective, which is a nine story and a seven story
18 view, as opposed to a 13 and a 13 story view, so I
19 guess I would like to understand better how the
20 perspective relates to the proposed building heights.
21 At a certain level -- oh, I'm sorry. Go ahead.

22 MR. LAWSON: I was just going to say part
23 of that is because of the way that they are dealing
24 with some of the trees and grade on the site and the
25 fact that Kenilworth Avenue in the front and some of

1 this stuff that is kind of happening on the front of
2 the site, that building will appear larger actually
3 from the other side as you go down into the center of
4 the site.

5 So I'm not sure that will be enough to
6 account for the amount that you're talking about, but
7 they are definitely proposing a significant amount of
8 development, particularly right along Kenilworth
9 Avenue with heights of, as I mentioned, up to 130
10 feet.

11 COMMISSIONER HILDEBRAND: And what you're
12 suggesting is cutting down that by a couple of stories
13 in each case?

14 MR. LAWSON: What we're suggesting is that
15 the Zoning Commission consider that, different zoning
16 that would cut the height down for the central office
17 component. It's in the graphic you are looking at.
18 The central office component is kind of right in the
19 middle of the site and then beside that is residential
20 development that is also being proposed to 130 feet,
21 and under the Office of Planning proposed zoning would
22 be limited to 90 feet.

23 COMMISSIONER HILDEBRAND: Is the high
24 density residential use there compatible with the
25 freeway? I'm thinking there are other areas in town

1 where we have residential directly adjacent to a
2 freeway, Whitehurst Freeway, but it's a fairly low use
3 and peak hour use. I go on Kenilworth Avenue quite
4 frequently and that is a heavily trafficked road.

5 Do you see any conflict there with the
6 notion of building this residential so tight to the
7 freeway?

8 MR. LAWSON: Not necessarily. You know,
9 it's not uncommon for higher density to be located
10 against traffic corridors such as this. I think one
11 of the things that the applicant is considering is
12 that this would help to buffer existing residences and
13 the low density development to some extent from the
14 freeway.

15 It doesn't help the people who are moving
16 beyond the freeway, but the higher density building
17 could be designed to be soundproofed and to take
18 advantage of some of the views, some of the really
19 significant and really quite beautiful views that
20 would be available from this site, particularly from
21 some of the higher elevations. So, you know, it's
22 kind of creating some of these elements.

23 MS. MCCARTHY: In addition, we understand
24 from DDOT that one of the concerns has been that
25 Kenilworth Avenue very much functions as a barrier

1 between the waterfront and the rest of the ward. Just
2 on the other side of Kenilworth Avenue is what is
3 referred to as downtown Ward 7, which is the Minnesota
4 Benning area, retail area.

5 And so DDOT's plan, as we understand it,
6 is to try to boulevard Kenilworth Avenue to reduce its
7 feel that it feels more like a limited access highway
8 and to bring it down more at street level and to make
9 it, again, more of a boulevard than the kind of
10 character that it has now.

11 COMMISSIONER HILDEBRAND: Is it possible
12 to bridge over it more substantially than what is
13 being proposed? It seems like a very tenuous
14 connection to the Metro stop. I just want to make
15 sure I'm clear. The applicant isn't proposing that as
16 part of this PUD. They are just showing it as a
17 possible connection. Is that correct?

18 MR. LAWSON: Yes. Certainly, the
19 provision of a much better connection than exists
20 right now as part of the work that DDOT is doing right
21 now and providing, making sure that that connection
22 from the Metro Station to serve existing
23 neighborhoods, existing residents on the opposite side
24 of Kenilworth Avenue is an important part of that
25 study.

1 The applicant has so far not made -- has
2 not made the provision of that connection part of
3 their amenity package, although they are certainly
4 providing the connection on their own property. How
5 you get from that pedestrian walkway down into and
6 then through the site is an important part of that.

7 The connection has not been designed, so
8 it certainly could be -- so we don't know exactly what
9 it's going to be yet, but in my preliminary
10 discussions with DDOT, they have certainly been
11 talking about it being a substantial connection, both
12 physically substantial and aesthetically substantial
13 as well. And by aesthetically substantial, they see
14 it as an important element along Kenilworth Avenue,
15 and so the design of that element will be very
16 important.

17 COMMISSIONER HILDEBRAND: The other
18 question I have is is the location where they show the
19 pedestrian bridge actually a possible location in
20 consideration of the Metro? Would it work there? Has
21 it been studied to the point where we know it could go
22 there, because it seems fairly critical to their
23 design layout that it be there?

24 MR. LAWSON: Yes. The applicant has had
25 preliminary discussions with DDOT. We're continuing

1 those discussions and so far there haven't been any
2 objections raised to it being located at that
3 position.

4 COMMISSIONER HILDEBRAND: But it works
5 with WMATA and the entrance to the Metro as well?

6 MR. LAWSON: Yes. That is my
7 understanding, yes.

8 CHAIRPERSON MITTEN: I thought they were
9 connected directly.

10 COMMISSIONER HILDEBRAND: The other
11 question I had is to get a better understanding of how
12 the parking is working. It seems that the applicant
13 is using the parking concepts that we have seen in a
14 PUD at Rhode Island Avenue Metro Stop where the bulk
15 of the parking structure is being surrounded by
16 residential development. Is that true for the entire
17 site? There are just a few pockets of parking that
18 everyone will share?

19 MR. LAWSON: They are proposing kind of a
20 wide range in parking, because it is a large site and
21 there are a number of different kinds of development
22 on the site. The parking for the office will be
23 directly below and within the office building. For
24 some of the residential buildings, there would be
25 underground parking, for some of them it would be

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1 surface parking, and for some it would be just exactly
2 the kind of parking area you're describing right now,
3 structured parking surrounding by residential
4 buildings.

5 So it's a variety of elements. The Office
6 of Planning has already expressed some concerns with
7 the concept of the structured parking and we'll need
8 to know more details of how that might function and,
9 in particular, if that parking is serving as off-site
10 parking, how it will function. And so those are big
11 issues and they have already been flagged with the
12 applicant.

13 COMMISSIONER HILDEBRAND: Okay. So they
14 will be providing a more detailed layout of where
15 parking is associated for each of the townhouse units?

16 MR. LAWSON: Absolutely. In Stage 1 I
17 think they are really looking for a clear indication
18 of what kinds of heights and densities might be
19 plausible on the site, a basic understanding of what
20 the amenity package might be, a basic understanding of
21 how we're going to resolve some of the access issues.

22 Those are kind of critical issues at this
23 point as well as, like you were saying, an
24 understanding of how the basic form will be, but I
25 suspect that that will be evolving even as we get into

1 the Stage 2 portion of the PUD.

2 COMMISSIONER HILDEBRAND: Thank you.

3 CHAIRPERSON MITTEN: Mr. Hood?

4 VICE CHAIR HOOD: Madam Chair, just a
5 quick question. Mr. Lawson, during the process of
6 thinking this through, has there been any
7 consideration about the Benning Road Trash Transfer
8 Station? I'm not exactly sure of the orientation of
9 it, but I know it's in the area. I know it's
10 somewhere near.

11 MR. LAWSON: That particular issue hasn't
12 come up with me. So are you talking --

13 VICE CHAIR HOOD: It's in the area
14 somewhere. I do know that. I know that this -- yes,
15 it's in the area.

16 MR. LAWSON: It's about 500 feet away.

17 VICE CHAIR HOOD: Oh, 500 feet?

18 MR. LAWSON: Yes, I'm guessing.

19 VICE CHAIR HOOD: And I believe it's
20 pointing toward --

21 MR. LAWSON: I won't testify to that.

22 VICE CHAIR HOOD: Well, I need to ask you
23 a question, but my concern is I want to make sure that
24 we consider that. For those of us who live by a trash
25 -- I'm not saying that I do. For those of us who live

1 by trash transfer stations, sometimes when it's 90
2 degrees it can be a rather smelly operation, a
3 neighborhood to live in.

4 But I just want to make sure especially
5 since we're just starting out with this new community
6 that we try to at least talk with the applicant and
7 make sure we have some buffers in place or whatever is
8 necessary to cut back on some of the things, this
9 smell. I don't want them to be subject to some of
10 those things I had to deal with, but I can tell you
11 that is an issue and I am just wondering.

12 First of all, is that site up and running?
13 Do you know? I mean, this approval.

14 MS. MCCARTHY: No, I don't believe the new
15 facility is completed, but the trash transfer station
16 is basically adjacent to the Pepco Power Plant. They
17 are two seriously obnoxious land uses that are
18 adjacent to this site and I think it's safe to say
19 that there was a considerable amount of time and
20 energy devoted in the many charrettes and community
21 planning processes for how to buffer from views and
22 other adverse impacts of those facilities. But as the
23 Commission probably remembers, the new trash transfer
24 facility is designed to be totally contained inside.

25 VICE CHAIR HOOD: State of the art.

1 MS. McCARTHY: And to really be state of
2 the art in terms of minimizing any smells or sounds,
3 because all the dumping will take place inside.

4 VICE CHAIR HOOD: Okay. I think this
5 project -- I mean, it's something over there on
6 Kenilworth that's long overdue, but I will tell you
7 that during the hearing process, that's one of the
8 things that I will be looking at and also the traffic
9 pattern of those trucks. Thank you, Madam Chair.

10 CHAIRPERSON MITTEN: Anyone else? Mr.
11 Parsons?

12 COMMISSIONER PARSONS: I want to follow-up
13 on a couple of things that Mr. Hildebrand was touching
14 on. Do you know if the parking at this point, of
15 course it's just 1st Stage, is designed under the
16 office building with the presumption that there is a
17 bridge going across to the Metro stop, because if the
18 bridge wasn't there, should we be considering an
19 alternative parking plan when we hear this?

20 MR. LAWSON: I just want to make -- make
21 sure I'm clear on the question. The bridge across
22 Kenilworth will be a pedestrian bridge only.

23 COMMISSIONER PARSONS: I understand.

24 MR. LAWSON: Okay.

25 COMMISSIONER PARSONS: But if you have

1 Metro access by a pedestrian bridge, you probably have
2 different rationale for your parking under your office
3 building.

4 MR. LAWSON: Yes, their entire --

5 COMMISSIONER PARSONS: Since they are not
6 proffering this as anything other than an illustration
7 and negotiations with DOT, really we won't ignore it,
8 but it's not a given. That's my point. So should we
9 be looking at a parking structure underneath the
10 building that would handle the traffic without it?

11 MR. LAWSON: I understand what you're
12 saying. We continue to raise that.

13 COMMISSIONER PARSONS: Okay.

14 MR. LAWSON: With the applicant, how they
15 would address the situation of the pedestrian bridge
16 not being constructed. My understanding is that the
17 pedestrian bridge connection is a very high priority
18 of both WMATA and DDOT as well.

19 COMMISSIONER PARSONS: But your report
20 says there's no funding for it.

21 MR. LAWSON: There is no funding from the
22 applicant for it.

23 COMMISSIONER PARSONS: No.

24 MR. LAWSON: We should be able to get --

25 COMMISSIONER PARSONS: I thought the

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1 report said there is no funding with DOT or WMATA.

2 MR. LAWSON: Okay. Those issues haven't
3 been resolved yet.

4 COMMISSIONER PARSONS: All right. I
5 understand.

6 MR. LAWSON: And I think what we're seeing
7 is that the Kenilworth Study, Kenilworth Avenue Study
8 from DDOT, is expected to come out very shortly and
9 that should start to address some of these specific
10 issues that you're talking about.

11 MS. MCCARTHY: Our understanding from Mr.
12 Talaleni was that the Kenilworth Study and DDOT's
13 plans definitely included an improved connection to
14 Metro. Their plan was to do it further down closer to
15 the existing residences or closer to the quiet
16 gardens, but that if this project were able to make a
17 contribution and if it were definitely going forward,
18 then DDOT would consider either two locations or
19 moving the location that had been proposed.

20 CHAIRPERSON MITTEN: I wanted to just
21 interject something, because it seems to me that Mr.
22 Parsons' question sort of was how are you going to
23 accommodate parking, but what if you don't get the
24 pedestrian connection.

25 I question whether or not the office is

1 appropriate at all without the pedestrian connection
2 directly to the Metro Station, and that is something
3 I would like to have the Office of Planning and the
4 applicant explore, about whether or not we should even
5 be planning on this if we don't have assurances that
6 we can put the pedestrian connection in this location
7 in a timely manner.

8 COMMISSIONER PARSONS: Good point.

9 MS. MCCARTHY: Yes. I think the Office of
10 Planning would say we feel that the pedestrian
11 connection is really essential to make this project
12 work and the applicant, I think, feels similarly in
13 that.

14 What they have planned is their retail
15 core to be lining that pedestrian connection when it
16 gets cover into the development, so they definitely
17 see that as leading right to the heart of the
18 development. But we can certainly work with the
19 applicant on firming up the nature of the commitment
20 to getting that pedestrian bridge built.

21 CHAIRPERSON MITTEN: Well, you know, one
22 of the things that the Commission has struggled with
23 in the past is, you know, approving PUDs that are
24 targeted to a specific use and then if that doesn't
25 happen, then we're left with something that you might

1 not have supported otherwise. And, you know, I think
2 we have kind of a sense of how real is this and if
3 it's not, then let's approve a plan that makes sense
4 and that people can have a reasonable expectation of
5 coming to fruition. I'm sorry, Mr. Parsons, I
6 interrupted you.

7 COMMISSIONER PARSONS: I want to make sure
8 I understand. Your recommendation is that these
9 buildings on Kenilworth Avenue should not exceed 110
10 feet?

11 MR. LAWSON: Our recommendation is the
12 office building on Kenilworth Avenue, that a CR Zone
13 be established, which would allow 110 feet just for
14 the office buildings.

15 COMMISSIONER PARSONS: So the residential
16 is not at 130?

17 MR. LAWSON: Under the applicant's
18 proposal, the residential and the office buildings are
19 both at 130 feet. Under the Office of Planning's
20 proposed zoning, the office building would be limited
21 to 110 feet and the residential buildings would be
22 limited to 90 feet.

23 COMMISSIONER PARSONS: Well, you're
24 suggesting this in the alternative.

25 MR. LAWSON: Yes.

1 COMMISSIONER PARSONS: What I'm suggesting
2 is maybe the Commission would agree with you that
3 that's right thing to do and maybe it shouldn't be in
4 the alternative, that it should be the alternative.

5 CHAIRPERSON MITTEN: I'm with you.

6 MR. LAWSON: That would, of course, be the
7 Zoning Commission's decision.

8 COMMISSIONER PARSONS: Thank you. I
9 didn't mean to make you a Member of the Commission.

10 MR. LAWSON: Thank you.

11 COMMISSIONER PARSONS: Let me move on
12 then. I now understand what you're saying. I'm very
13 concerned about this new term, garage liner. Garage
14 liner apartments and I guess that's the term for you
15 build a parking garage and you line it around its
16 perimeter with residential.

17 Now, I think the exhibit, the one that Mr.
18 Hildebrand has favored is at Tab A and it shows
19 especially this concept of Building C or Building
20 Complex C, which is on the, I guess that would be,
21 southern side, but these residual units are
22 surrounding the parking deck with no embellishment at
23 all. I mean, what a great opportunity for another
24 deck on top of this for a roof garden or some amenity
25 to these people other than looking out at this parking

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1 lot.

2 Have you discussed that with them at all,
3 because that's not the only one? There are three of
4 them, but it's most graphic on this exhibit.

5 MR. LAWSON: No, I wouldn't say not
6 specifically. We have discussed the parking in
7 general terms and we discussed also the greening of
8 the site in general terms. I think it's a great idea.

9 COMMISSIONER PARSONS: So I assume the
10 problem is that because of the soils, they can't go
11 down for parking here. That's the reason for this
12 proposal to go up three stories for the parking
13 garage?

14 MR. LAWSON: The reason relates to some
15 extent to soils and some extent to expense.

16 COMMISSIONER PARSONS: I see. Now, these
17 sketches that go out into the park, do they tell you
18 how they are coming with the National Park Service on
19 this amenity, I will call it?

20 MR. LAWSON: For the connection?

21 COMMISSIONER PARSONS: Park-like walks
22 going out into the park. Premature?

23 MR. LAWSON: No, it's potentially pretty
24 mature. I haven't had a lot of discussions with them
25 on those connections yet, although I would certainly

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1 agree with you about how those connections are, how
2 they function, how public they feel, how safe they
3 feel. Those will all be very important considerations
4 as we get further into the design process.

5 COMMISSIONER PARSONS: Okay. All right.
6 Thank you.

7 CHAIRPERSON MITTEN: Anyone else? Mr.
8 Jeffries?

9 COMMISSIONER JEFFRIES: Yes. I am still
10 trying to get myself oriented on Kenilworth Avenue
11 here. What we have is a fairly busy thoroughfare,
12 Kenilworth, and then next to it is Interstate 295. I
13 am not familiar with this area that well, I guess. So
14 we have the interstate and it's elevated up about how
15 much or down?

16 COMMISSIONER PARSONS: It's actually at
17 the same grade.

18 COMMISSIONER JEFFRIES: It's at the same
19 grade?

20 COMMISSIONER PARSONS: Yes.

21 COMMISSIONER JEFFRIES: And so --

22 COMMISSIONER PARSONS: It's the same.

23 COMMISSIONER JEFFRIES: It's almost like
24 a service road almost in a way?

25 COMMISSIONER PARSONS: Yes.

1 COMMISSIONER JEFFRIES: Okay. So it's not
2 elevated. Okay. And the rationale for looking at so
3 much height along Kenilworth Avenue, I see that there
4 is sort of more backing down as they move north, I
5 guess. The rationale for the height there at
6 Kenilworth Avenue is what?

7 MR. LAWSON: Well, you know, concerning
8 one of the elements of the applicant's rationale for
9 that height would be to allow additional density to be
10 concentrated around the smaller footprint and along
11 Kenilworth Avenue. Reducing the height could have the
12 impact of spreading some of the density out further on
13 the site.

14 The height along Kenilworth Avenue allows
15 them a significant amount of density on the site in
16 general and allows for some of that density to be
17 fairly low density with development next to the
18 existing row houses, you know, adjacent to the
19 schools, for example, is at a lower height at a lower
20 density than what is being proposed along Kenilworth
21 Avenue. So that will be, you know, part of their
22 rationale for that.

23 COMMISSIONER JEFFRIES: And then so on the
24 other side, south of Interstate 295, I mean, we're
25 talking fairly low density?

1 MR. LAWSON: It is fairly low density,
2 although the zone would certainly allow a much greater
3 amount of development than exists right now, but
4 across Kenilworth Avenue is C-3-A Zoning, which is
5 what the Office of Planning has proposed for the
6 majority of this site.

7 MS. MCCARTHY: And that's where the
8 District Government is proposing to build two office
9 buildings at the Metro stop.

10 COMMISSIONER JEFFRIES: Yes. And at a
11 height -- I mean, do we have a sense of the envelope?

12 MS. MCCARTHY: I don't know.

13 COMMISSIONER JEFFRIES: Well, I tell you,
14 at first blush, I guess in terms of the density of
15 this, somehow or another it doesn't strike me as sort
16 of maybe problematic as the prior project we looked at
17 earlier. I'm a little bit from the Palladian school,
18 so I like the symmetry and so forth and I can even
19 perhaps live with this wall that is along Kenilworth
20 Avenue.

21 I just, you know, need to just better --
22 you know, have a better sense of just the context in
23 which it sits and even if we're looking at future
24 development plans, I mean, that could be helpful. It
25 might be in there. This is a fairly big package, but

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1 the level of density and also, obviously, the level of
2 benefit that is going to come from this development.

3 I am, you know, probably, at this point,
4 much more favorably, you know, impressed with it and,
5 again, happy that we are looking at a 1st Stage PUD
6 and that there will be lots of time to render opinion
7 and give suggestions as to how to go forward.

8 CHAIRPERSON MITTEN: Anyone else have
9 questions or comments? I would like to get a sense of
10 -- Mr. Parsons had raised an issue that I would agree
11 with, which is rather than set down two alternatives
12 for the underlying zone, that we just set down the
13 Office of Planning alternative, in which case we would
14 have to ask if there is a consensus to do that.

15 We need to ask the applicant to come
16 forward, because we would basically be denying part of
17 their request in doing that. So I'm trying to get a
18 sense where the Commission is on that point.

19 VICE CHAIR HOOD: I would like to hear
20 from the applicant, Madam Chair, because it becomes a
21 point, I think, of is it feasible for them to still do
22 the project. I mean, that's not just my point, but I
23 would like to hear from them.

24 CHAIRPERSON MITTEN: Okay. Mr. Feola?

25 MR. FEOLA: Thank you, Madam Chair. For

1 the record, Phil Feola with Pillsbury Winthrop Shaw
2 Pittman on behalf of the applicant in the case you
3 have just been discussing.

4 It is -- to follow-up with what
5 Commissioner Hood said, it is a pretty complicated
6 issue. The balance here that went on into doing this
7 plan, which was the result of a long community
8 planning process, they went through a lot of
9 charrettes, a lot of input from a lot of neighbors and
10 a lot of Government agencies, WMATA, DDOT, the Office
11 of Planning, all the ANCs, there are four ANCs that
12 surround the site, came to a balance of what is -- how
13 big that wall should be.

14 How should we screen the Pepco Plant,
15 which is this huge monstrosity immediately to the
16 south, and the transfer station, which is physically
17 adjacent to that site, the 400 or 600 feet of right of
18 way that exists between the private property here and
19 the other side of Minnesota Avenue.

20 And so we were trying to balance that and
21 provide the affordable housing that is an important
22 part of what this community wanted and what the city
23 is pushing for, and this site seems to have a lot of
24 things going for it that play into all the city plans.
25 I mean, it's a transit-oriented development. It's

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1 adjacent to three of the Great Street Initiatives that
2 the mayor has started, Minnesota, Benning Road and
3 Nannie Helen Burroughs Avenue.

4 It's a development opportunity. It's a
5 housing opportunity area. It's consistent with the
6 Anacostia Waterfront Initiative and I think you had a
7 letter from the Anacostia Waterfront Corporation. We
8 have been working with them extensively and, in fact,
9 the AWC is funding the design of the bridge. The
10 applicant is going to hold a competition for the
11 actual design of the pedestrian bridge, but it's going
12 to be funded by AWC.

13 WMATA has actually approved the bridge and
14 they have actually done a study of the station of how
15 to make a better pedestrian connection, and this is
16 the preferred location that we have shown on the
17 plans. There are a lot of issues about funding. I
18 probably can speak for the applicant. If the bridge
19 doesn't get built, this project is probably not what
20 you see before you, because it's an important part of
21 this transit-oriented development. There might be
22 office, but it certainly wouldn't be 700,000 square
23 feet of office.

24 And so I'm not trying to be glib, but I
25 think it's very hard to sit here and say lock two

1 floors off, lock four floors off the residential and
2 not -- I don't think my client can have an immediate
3 statement to tell you that it won't mean anything. I
4 think it will mean something. Something is going to
5 have to give, you know, and I don't know what that is.

6 So I guess I would, on behalf of the
7 applicant, ask you to do in the alternative. We heard
8 what you said. The applicants are here. We know what
9 the issues are and we have worked with the Office of
10 Planning. We know height and density on that front
11 parcel adjacent to Kenilworth is a major issue and
12 we're working to come closer to where the Office of
13 Planning would like us to be, but I guess that we
14 would ask that it be advertised in the alternative and
15 we'll work to trying to find the place that we can
16 meet.

17 CHAIRPERSON MITTEN: Any questions for Mr.
18 Feola? Okay. Thank you. Mr. Parsons?

19 COMMISSIONER PARSONS: Well, I guess I'm
20 persuaded by that, but I want to make sure that the
21 alternative is expressed graphically by the applicant
22 not we looked at it and the numbers don't work. I
23 mean, we need to have an equal visual representation
24 of what that alternative would look like and it
25 shouldn't be the Office of Planning that has to do

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1 that.

2 CHAIRPERSON MITTEN: I guess one of the
3 reasons why I just chimed in as soon as you mentioned
4 just advertising the Office of Planning proposal is
5 because I don't want to assume the applicant to think
6 that I would support that kind of height. I just
7 don't see that being appropriate. It's not happening
8 on the Minnesota Avenue side of Kenilworth Avenue, you
9 know, immediately proximate to the Metro.

10 I think to the extent that there is
11 screening that needs to take place, I think there's
12 better ways to do it than just building taller
13 buildings. And I just don't think that kind of height
14 is appropriate in kind of an isolated way, an isolated
15 -- and I feel really differently about it when you
16 talk about things, you know, when you're doing an
17 overlay or something, but not isolating it to a
18 specific project where no surrounding projects are
19 going to have height of that magnitude. Anyone else?

20 COMMISSIONER JEFFRIES: Well, I hear you,
21 Madam Chair, and I, too, would be, you know, concerned
22 particularly about, you know, how this would sit in
23 the context of a lot of more lower density projects.
24 But, you know, I do find the applicant compelling as
25 it relates to the benefits and how in many ways this

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1 project will really serve many of the policy
2 initiatives of the Administration, particularly around
3 economic development.

4 And I just would like to just allow this
5 applicant the opportunity to, you know, make its case
6 as it relates to the 130 not only for the office, but
7 even for the residential. Let's just go down the path
8 and see what happens. I don't want to, at this point,
9 you know, as your father told you, never say never,
10 so --

11 CHAIRPERSON MITTEN: I wish I hadn't told
12 you that.

13 COMMISSIONER JEFFRIES: Yes, you'll be
14 hearing that from now on. So I would just like to
15 keep an open mind. I think that we have done a
16 sufficient job up here letting the applicant know that
17 we have concerns, but I would like to give them the
18 opportunity to go forward and visit this and make
19 their case.

20 CHAIRPERSON MITTEN: All right. Anyone
21 else?

22 VICE CHAIR HOOD: I would just concur with
23 what Commissioner Jeffries said and, also, Madam
24 Chair, your comments. I agree with your comments,
25 because it is a project that we actually all voted on

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1 up here 5-0 and I think we made a mistake on the
2 height issue. I know we did. You know, when you ride
3 and look at it, you say oh, man, did I do that? But
4 I think as was stated, the applicant has heard us and
5 hopefully we can find that mid range there. Thank
6 you.

7 CHAIRPERSON MITTEN: Mr. Hildebrand?

8 COMMISSIONER HILDEBRAND: I actually would
9 support your position on this. I think that the
10 requested height is too high for the area and I would
11 prefer proceeding with the Office of Planning's
12 proposal.

13 CHAIRPERSON MITTEN: Would you just -- I
14 just want to make sure I understand where you are, Mr.
15 Parsons.

16 COMMISSIONER PARSONS: I just want to make
17 sure that we have before us two equally delineated
18 proposals.

19 CHAIRPERSON MITTEN: Yes.

20 COMMISSIONER PARSONS: Not the applicant
21 coming in saying here is the model of my beautiful
22 project and the numbers don't work for the other guy.

23 CHAIRPERSON MITTEN: Yes.

24 COMMISSIONER PARSONS: The other
25 alternative is for us to vote and say there is only

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1 one alternative here and it's the Office of
2 Planning's. I am going to give them an opportunity,
3 but I'm with the rest of you. I think --

4 COMMISSIONER JEFFRIES: I think you agree
5 with Commissioner -- Vice Chair Hood and myself.

6 CHAIRPERSON MITTEN: He's claiming you,
7 Mr. Parsons.

8 COMMISSIONER JEFFRIES: I agree with you
9 wholeheartedly. I think what you're saying is that,
10 you know, you want to see both alternatives and before
11 you were saying that you just wanted to see the OP
12 version.

13 COMMISSIONER PARSONS: Right.

14 COMMISSIONER JEFFRIES: And I think, like
15 myself, you and Vice Chair Hood are saying the same
16 thing.

17 CHAIRPERSON MITTEN: Okay. Well --

18 COMMISSIONER JEFFRIES: Sort of.

19 CHAIRPERSON MITTEN: If one of you would
20 write the motion, I would not vote against the set
21 down having alternatives, but I do want to be very
22 clear about my position and let the chips fall where
23 they may.

24 COMMISSIONER PARSONS: No. I am torn
25 between the two of you. I'm not going to make the

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1 motion.

2 COMMISSIONER JEFFRIES: Let the Vice Chair
3 make a motion.

4 VICE CHAIR HOOD: Well, I will just simply
5 make a motion. Actually, I thought we would move to
6 the next thing. I'll make a motion that we set down
7 Case --

8 CHAIRPERSON MITTEN: 05-28.

9 VICE CHAIR HOOD: 05, what was it?

10 CHAIRPERSON MITTEN: 28.

11 VICE CHAIR HOOD: 05-28 and we set down
12 both the language proposed and the alternative.

13 COMMISSIONER JEFFRIES: I'll second it.

14 CHAIRPERSON MITTEN: All right. Is there
15 any further discussion? Then all those in favor,
16 please, say aye.

17 ALL: Aye.

18 CHAIRPERSON MITTEN: Those opposed,
19 please, say no. Mrs. Schellin?

20 MS. SCHELLIN: Staff would record the vote
21 5-0-0 to set down Zoning Commission Case No. 05-28 and
22 also setting down the alternative as proposed by OP,
23 Commissioner Hood moving, Commissioner Jeffries
24 seconding, Commissioners Hildebrand, Mitten and
25 Parsons in favor.

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1 COMMISSIONER PARSONS: Madam Chair, I'm
2 sorry. Mr. Lawson, I can't find it in your report,
3 but I think when I skimmed it, I saw that you were
4 asking for some visual analysis.

5 MR. LAWSON: We thought that additional
6 view analysis from the site and through the site would
7 be helpful to the Commission.

8 COMMISSIONER PARSONS: We can do that with
9 the two alternatives here.

10 MR. LAWSON: Well, we can pass that on to
11 the applicant.

12 COMMISSIONER PARSONS: I just wanted to
13 make sure I supported that and we include that as
14 something that we wanted to see.

15 COMMISSIONER JEFFRIES: And I would also
16 add, to the extent that there is any potential future
17 development that is adjacent to this area, I mean,
18 just in terms of volumetric that we can see that to
19 see it in context, so that we're not necessarily
20 looking at a wall that is in a field that, you know,
21 might be short-lived.

22 CHAIRPERSON MITTEN: Thank you. We're
23 going to take a three minute break. I need to confer
24 with my colleagues about the schedule, the pace of our
25 meeting this evening. We'll be back in three minutes.

1 (Whereupon, at 8:54 p.m. a recess until
2 9:05 p.m.)

3 CHAIRPERSON MITTEN: We are back on the
4 record. The main reason why we went off the record
5 was because we have put the continuation of our
6 discussion, our deliberation, the inclusionary zoning
7 text amendment on for later tonight on the erroneous
8 assumption that we would move quickly through our
9 agenda, and we're just not and I don't want the
10 evening to get later and then we don't get to finish
11 this.

12 So what we have managed to negotiate among
13 ourselves is that we would not take up the
14 inclusionary zoning text amendment tonight, but we
15 will give ourselves adequate time on Tuesday the 22nd
16 starting at 6:00 p.m. So it's a week from tomorrow
17 and we will either be in this room or we will be in a
18 conference room upstairs on the 11th floor, but come
19 here and if we're not in here, we'll make sure there's
20 directions as to where we'll be, but we're committed
21 to taking this up on the 22nd and we'll stay until
22 we're done. So I didn't want people to have to wait
23 anymore and have the evening get away from us.

24 So we're ready then to move to proposed
25 action on the regular agenda, Case No. 05-15, which is

1 Broadway I Associates, LLC, a consolidated PUD on that
2 site.

3 Mrs. Schellin, is there anything that we
4 need to know?

5 MS. SCHELLIN: No, ma'am.

6 CHAIRPERSON MITTEN: All right. Then we
7 had the additional submissions from the applicant that
8 were submitted October 31st and I would ask if anybody
9 had any comments. We're on the Broadway I Associates
10 case, 318 I Street, N.E.

11 COMMISSIONER JEFFRIES: Madam Chair, I am
12 not participating in that case.

13 CHAIRPERSON MITTEN: Thank you, Mr.
14 Jeffries.

15 VICE CHAIR HOOD: Madam Chair, if you
16 recall, I had asked if DDOT would look at whether or
17 not the alleyway should be one way or not.

18 CHAIRPERSON MITTEN: Yes.

19 VICE CHAIR HOOD: And I'm not sure if
20 there was another response, but the response I see, I
21 don't think it fits the bill. It says Mr. Bach
22 confirms that the existing alley currently operates
23 two ways. DDOT encourages the use of the wide
24 southern end of the alley, which DDOT will consider
25 converting it to one way if they receive a request to

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1 convert the alley to a one way.

2 I mean, I didn't follow that. I think my
3 intention was to see whether or not it was feasible
4 because of the traffic impacts that we have heard of
5 in the hearing, plus to do it one way or not, and I
6 don't think, at least for me, this doesn't answer the
7 question unless I'm missing the point.

8 CHAIRPERSON MITTEN: Unfortunately,
9 sometimes the advice we get from DDOT isn't the most
10 hard hitting, because they are not here and we can't
11 ask it ourselves and then we can't press the points.
12 So, unfortunately, I think that's as good as it's
13 going to get.

14 VICE CHAIR HOOD: Well, I understand that,
15 but this comes from Wells and Associates. I don't
16 understand, but anyway, maybe for fun. Let's just
17 propose.

18 CHAIRPERSON MITTEN: This is for a
19 proposed action.

20 VICE CHAIR HOOD: Well, maybe finally we
21 can clarify that. Do they think we should do it or
22 not do it? That's basically what I want, what I was
23 trying to find out, yes or no.

24 CHAIRPERSON MITTEN: You were asking for
25 a recommendation from them and they are just saying

1 we're open to thinking about it, which is quite
2 different. Anyone else?

3 COMMISSIONER HILDEBRAND: Yes, Madam
4 Chair. I remember there being an issue about this
5 \$25,000 grant.

6 CHAIRPERSON MITTEN: Yes.

7 COMMISSIONER HILDEBRAND: And I believe it
8 has been taken off the table by the applicant, but
9 there was a statement that they were willing to put it
10 back on the table if the ANC designated someone in the
11 time, and I note that the ANC meeting was before our
12 meeting tonight. I was wondering if we had any
13 information from the applicant as to whether or not
14 that -- there had been a successful resolution to
15 that.

16 CHAIRPERSON MITTEN: Can anybody from the
17 Office of Planning address that point?

18 MS. STEINGASSER: No, ma'am, we cannot.

19 CHAIRPERSON MITTEN: Okay. Okay. Just
20 for the record, Mr. Hood, Mr. Parsons wasn't present
21 the night we had the hearing either, so it's the three
22 of us.

23 VICE CHAIR HOOD: Just the three of us?

24 CHAIRPERSON MITTEN: Yes.

25 COMMISSIONER HILDEBRAND: I was wondering

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1 if we could ask the applicant if there had been any
2 successful movement on that. I would hate to see that
3 piece dropped from the table if it has been resolved.

4 CHAIRPERSON MITTEN: Ms. Prince, can you
5 address that for us?

6 MS. PRINCE: Good evening. Alison Prince
7 at Pillsbury Winthrop Shaw Pittman. I did hear from
8 Karen Wirt of the ANC after the last meeting, which I
9 believe was Thursday. The issue has been resolved.
10 We weren't permitted to submit additional materials
11 for the record.

12 I believe the two groups chosen were H
13 Street, Main Street is one of the groups, and then the
14 other group I believe was the group that I had
15 proffered in our prehearing statement, the Capitol
16 Hill Bid, and the ANC got the message loud and clear
17 that the funds have to be earmarked for a very
18 specific program.

19 I'm sorry. I'm not prepared tonight to
20 give you the specifics of their recommendations. I
21 didn't think I was going to be able to get it in, but
22 I would be happy to get it into the record before
23 final action and we're willing to go along with what
24 the ANC did.

25 CHAIRPERSON MITTEN: Okay. Then I think

1 we should reopen the record to receive that material.

2 MS. PRINCE: Great. Great.

3 COMMISSIONER HILDEBRAND: That would be
4 great. The only other comment or two other comments
5 I would like to make. One of the things I had asked
6 for, and the applicant provided quite nicely, was the
7 concept for how this cantilevered section of the
8 building was going to be addressed, and I think it was
9 for the most part convincing for me.

10 I think that visually the ironwork or the
11 suggestion of ironwork might be a little light to
12 carry that weight, but I'm sure that the development
13 team will continue to work on that as they move
14 forward to make it more visually appropriate. And I
15 was pleased to see that the applicant was able to
16 resolve the parking issues in the garage to eliminate
17 the request for a variance on the isle width or the
18 number of compact parking spaces.

19 But there is one thing I would like to ask
20 as we look at these developments in the future. If
21 they could actually designate on the parking plan
22 which spaces are compact and which spaces are full
23 size. I think it's something we used to see and we're
24 seeing less and less these days, and I think it would
25 help to clarify for the Commission what actually is

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1 going where and makes the drawing so much easier to
2 read if they are identified that way. But I didn't
3 see any other issue from my original comments.

4 CHAIRPERSON MITTEN: Okay. Thank you.
5 Anyone else? I would just remind everybody that as it
6 is spelled out in the applicant's proposed plan, under
7 findings of facts and conclusions of law there are
8 really only -- once the PUD-related map amendment --
9 well, actually, there is no PUD-related map amendment
10 in this case. There is only two areas of relief that
11 are being asked after the elimination of the parking
12 relief that Mr. Hildebrand just mentioned, and one is
13 the lot occupancy and the other is the rear yard
14 requirement.

15 And there is a fair amount of benefits and
16 amenities that have been proposed, not the least of
17 which is affordable housing, which is a subject that
18 is near and dear to our heart these days. So I think
19 they have met their burden under the PUD regulations
20 and I would move approval of Case No. 05-15.

21 VICE CHAIR HOOD: Second.

22 CHAIRPERSON MITTEN: Is there any further
23 discussion? All those in favor, please, say aye.

24 ALL: Aye.

25 CHAIRPERSON MITTEN: I believe we have

1 none opposed.

2 MS. SCHELLIN: The staff would record the
3 vote 3-0-2 to approve Zoning Commission Case 05-15,
4 Commissioner Mitten moving, Commissioner Hood
5 seconding, Commissioner Hildebrand in favor,
6 Commissioners Jeffries and Parsons not voting having
7 not participated.

8 CHAIRPERSON MITTEN: Thank you. Okay.
9 The next case is 02-06, which is the Neighborhood
10 Commercial Overlay, another subject that is dear to
11 our hearts. I don't know if -- do you guys have a
12 copy of the notice which is probably the best way to
13 approach the discussion? Yes. Okay.

14 So there's two general areas where we have
15 some, I would say, significant suggestions that we
16 heard from the community. One is the manner in which
17 we define an eating and drinking establishment, and
18 then the other is sort of the trigger mechanism for
19 being counted, let's say, which, as we had proposed it
20 would be a Certificate of Occupancy and, as the
21 community folks had suggested, would be a building
22 permit application.

23 So what was being suggested for the
24 definitional part of it was we actually called that a
25 series of types of establishments, and in 13-5, in the

1 introductory portion, what had been suggested by the
2 Cleveland Park Citizens Association was that it would
3 be advised to read that eating and drinking
4 establishments are defined as those establishments
5 that have current "restaurant business license" and/or
6 an "alcoholic beverage license" allowing on-premises
7 sales, which would be a CR, CT or a Class D. I'm
8 reading out of a Cleveland Park Citizens Association
9 submission. I'm on page 7 at the bottom. And that
10 such establishments, to the extent of their ground
11 level street frontage, shall be subject to bottle
12 limitations and so that was the lead-in.

13 And so, first, let's talk about what the
14 Commission's view is on using those. I think the
15 issue that was raised for us by the Office of the
16 Attorney General is that having the language where you
17 say a current license is, first of all, saying what a
18 current license is. We talked about that a little bit
19 during the hearing where these licenses are, I guess,
20 renewable periodically, so they do have a finite life.

21 So there is that issue, but it was
22 suggested that it would be better to say that it would
23 be an establishment that was required to obtain a
24 license of that type, so we have a little bit of
25 nuance there. But I guess before we pursue it too

1 aggressively, do you like calling out the specific
2 establishments or do you prefer to use the licenses as
3 the defining quality?

4 COMMISSIONER PARSONS: I prefer the
5 licenses myself.

6 COMMISSIONER HILDEBRAND: And will the
7 Zoning Administrator know what type of licenses are
8 required by what type of use?

9 CHAIRPERSON MITTEN: Well, the business
10 license is issued by DCRA.

11 COMMISSIONER HILDEBRAND: Yes.

12 CHAIRPERSON MITTEN: The other licenses
13 that were mentioned are issued by ABRA, the Alcoholic
14 Beverage Regulation Administration, and the licenses--
15 so you're saying if someone comes in, it would be
16 required to -- I see what you're saying. Okay. I
17 guess they would have to consult with ABRA as to the
18 requirement for the alcohol.

19 MR. BERGSTEIN: Right. And the reason why
20 I think the Office of Planning agreed, we suggested
21 required, was because at the building permit stage it
22 would be unlikely that they would actually even have
23 a license and it's my understanding that DCRA won't
24 issue a license until they get a C of O.

25 So the problem, would they have the

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1 license was it was unlikely that they would do that,
2 that they would have that, the building permit, and
3 either the application for the building permit could
4 ask whether or not the proposed use would be one for
5 which any of these types of licenses would be required
6 or they could work out some sort of an MOA with the
7 alcohol folks.

8 For example, with CBRF, the issue arose
9 was how to make the connection between a CBRF facility
10 uses and the licensing uses and there is an
11 arrangement now where before the zoning is done, the
12 applicants have to go and get a certification from the
13 licensing body that this is the type of license that
14 they would have to get, and then the C of O is issued
15 based upon that.

16 So there would have to be some kind of
17 arrangement like that within DCRA for that type of
18 cooperation, because I do not believe that the Zoning
19 Administrator would know just based upon the zoning
20 use, which is what would be put down on the building
21 permit, what would be the compatible and comparable
22 license.

23 That's why the zoning uses were the ones
24 that were originally called out, because those would
25 be the ones the Zoning Administrator would know and in

1 the scheme, he or she would have to consult or make an
2 arrangement to understand the relationship between the
3 zoning use proposed and the building permit and how
4 that then affects the scheme.

5 CHAIRPERSON MITTEN: Okay. So that can be
6 accomplished.

7 MR. BERGSTEIN: Okay.

8 CHAIRPERSON MITTEN: I think using the
9 licenses takes a lot of the -- the decision of the
10 judgment required of the exercise, takes the judgment
11 out of it. Is that what you're --

12 COMMISSIONER JEFFRIES: You missed
13 something. You know, just make it broader.

14 CHAIRPERSON MITTEN: Right. Then what was
15 ruled as an effect isn't so much 1302.5(a), but when
16 you start to get into the provisions, more deeply into
17 the provisions of 1302.5, then it had been suggested
18 to us that we eliminate (a). No, we eliminate
19 everything after -- we keep (a) and (b) and eliminate
20 everything after that and replace it with what is on
21 the top of page 8 of the Cleveland Park Citizens
22 Association submission, which, basically, we would
23 compel the Zoning Administrator to do something, which
24 we can't do by law.

25 So that in itself is problematic, so their

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1 advice is problematic. But then it's built on
2 something that we could accommodate should we choose
3 to, which is the building permit is the trigger, as
4 opposed to a Certificate of Occupancy being the
5 trigger. And a building permit, essentially, requires
6 a structural change to -- you're not required to get
7 a building permit unless you're going to make a
8 structural change, which actually, there could be some
9 slippage if you use the building permit as the
10 trigger. So I don't know what folks' thoughts are
11 about that.

12 COMMISSIONER HILDEBRAND: So an interior
13 renovation of an existing structure from a non-
14 restaurant use to a restaurant use would not require
15 necessarily a building permit?

16 CHAIRPERSON MITTEN: No, I think it
17 probably would require a building permit depending on
18 what they were doing, but it would depend. It would
19 not -- Mr. Bergstein, the extent that they were
20 doing --

21 MR. BERGSTEIN: Yes. I'm showing Mr.
22 Hildebrand. This should be in your packages of where
23 a building permit is required under the Building Code
24 and you can look at that and then you would understand
25 what the circumstances would be under which a building

1 permit would be required.

2 COMMISSIONER HILDEBRAND: Yes, because I
3 would have assumed one would, but it was sounding as
4 though one wouldn't, but for altering and repairing an
5 existing building or structure you would be required
6 to get a building permit. So I think that would cover
7 it. A building permit should cover it even with
8 renovations or construction.

9 CHAIRPERSON MITTEN: As long as a building
10 permit is required. So if, for instance -- I guess
11 let's just play out a scenario that may or may not be
12 an accurate one, but let's say that someone -- I'm
13 trying to think of a use that someone could come in
14 for and do one set of structural changes and then
15 convert it to a restaurant or an eating establishment
16 and not require further structural changes. I'm not
17 sure.

18 COMMISSIONER HILDEBRAND: Which would be
19 almost impossible, because you would have to add a
20 kitchen of some kind.

21 CHAIRPERSON MITTEN: Yes.

22 COMMISSIONER HILDEBRAND: And a kitchen
23 exhaust system through the roof.

24 CHAIRPERSON MITTEN: Okay.

25 COMMISSIONER HILDEBRAND: Which is

1 significant change.

2 CHAIRPERSON MITTEN: One of the issues
3 that we struggled with, too, which I don't know quite
4 how to resolve that, would be that if individuals are
5 competing, you have to do a certain amount of design
6 work typically to get to a building permit stage.

7 So if you had two establishments that were
8 simultaneously basically going after the same
9 percentage of frontage that might be left over, there
10 might be two folks that, you know, basically, whoever
11 gets to the finish line first would get it and then
12 the other one would have to get a special exception,
13 but maybe that's -- you know, maybe we can't make this
14 perfect.

15 So is there a consensus to go with the
16 building permit application? Okay. So then let's
17 just briefly go through the provisions, so we make
18 sure that we can incorporate everything that needs to
19 be incorporated in to accommodate that. As I
20 mentioned, we really aren't able to incorporate as it
21 was proposed by the Cleveland Park folks, that we
22 can't just adopt what they suggested, because we can't
23 compel the Zoning Administrator to maintain a record
24 of anything. We can just make a provision for it.

25 So for (c), the existing (c) as it was

1 advertised needs to be modified. At a minimum, the
2 total linear street fronts for eating, we need to
3 define the term eating and drinking establishments,
4 shall be based on the existing records of, I would
5 say, ABRA and DCRA for such uses by address and
6 verified through field observations.

7 And, Mr. Bergstein, if I miss something as
8 we go through here, I hope you will just jump in.

9 MR. BERGSTEIN: That is correct, but it
10 does raise a question. If the requirement applies to
11 those who are required to get these licenses, and
12 let's say a number of people get their building
13 permits who are required to get the license, but don't
14 have the licenses --

15 CHAIRPERSON MITTEN: Yes.

16 MR. BERGSTEIN: -- the list of who
17 actually has the licenses won't be the accurate list.

18 CHAIRPERSON MITTEN: Right.

19 MR. BERGSTEIN: And I just wanted to point
20 out that the request, the language in here in terms of
21 how the linear street frontage should be measured,
22 which is based upon the existing records of
23 Certificates of Occupancy and is what was suggested by
24 DCRA in the first place, but then that doesn't work,
25 because you're changing it to building permits.

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1 So it really has to be just based upon
2 actual observations, I would suppose. But all I'm
3 saying is that there is no relationship. If you just
4 count the existing record, where some people that have
5 licenses are, that doesn't tell you who actually is
6 operating an eating or drinking establishment, because
7 their use may have lapsed, and it also doesn't take
8 into account those persons who become sort of vested
9 because they have got building permits, but have not
10 yet gotten those licenses and I don't know how to
11 solve that, but that's a problem. It sucks.

12 CHAIRPERSON MITTEN: This is like --

13 MR. BERGSTEIN: Couldn't we just ask the
14 Office of Planning to keep a list?

15 CHAIRPERSON MITTEN: We can ask them, but
16 we can't compel them. Okay. Well, I think what we
17 have to do is, I mean, I still like the suggestion
18 that we made a long time ago that we didn't seem to
19 have -- seems to have embraced, which is let's just
20 look at each of these neighborhoods and decide is it
21 obtainable at one point or not. Either you need a
22 special exception or not. You know, just so much
23 simpler, but we need something in place until we can
24 go back and revisit all that anyway.

25 So let's just -- is it defensible to where

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1 I had suggested editing it even though it's not
2 perfect, Mr. Bergstein?

3 MR. BERGSTEIN: Sure.

4 CHAIRPERSON MITTEN: Okay. If an eating--
5 and I'm on (d) now. I don't see why we need to change
6 (d).

7 COMMISSIONER HILDEBRAND: If we can step
8 back for one moment. Did we make the editorial
9 correction of (b) to change it from linear square
10 footage to linear street footage, street frontage, I'm
11 sorry?

12 CHAIRPERSON MITTEN: Oh, good point.
13 Thank you. Okay. Is everybody okay with (d)? Okay.
14 I think that (e) was one where it had been suggested
15 that this is probably a non-issue once we take
16 delicatessen out, you know, and delicatessen would be
17 out, because I don't believe that delicatessen needs
18 a restaurant business license or does it, Mr.
19 Bergstein? Do you know?

20 MR. BERGSTEIN: I do not know.

21 CHAIRPERSON MITTEN: Based on what the
22 Cleveland Park folks are telling us, I don't think
23 that a delicatessen needs a restaurant business
24 license, so I think (e) can be eliminated actually.

25 COMMISSIONER PARSONS: I don't know. What

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1 is this speaking to? Wasn't this speaking to people
2 getting a liquor license in a grocery store or
3 something like that?

4 CHAIRPERSON MITTEN: Well, actually, that
5 had to do with -- well, first let me say that based on
6 the list on the back of the Cleveland Park submittal,
7 the delis seem to generally have restaurant business
8 licenses.

9 COMMISSIONER PARSONS: Right.

10 CHAIRPERSON MITTEN: So forget what I just
11 said about that.

12 COMMISSIONER PARSONS: Oh.

13 CHAIRPERSON MITTEN: This is actually like
14 an accessory use issue.

15 COMMISSIONER PARSONS: Right.

16 CHAIRPERSON MITTEN: But I think --

17 COMMISSIONER PARSONS: If they are going
18 to have any of the obnoxious qualities, if you will,
19 they would have had to get the licenses that --

20 CHAIRPERSON MITTEN: Yes.

21 COMMISSIONER PARSONS: -- we are now
22 speaking about, so you could eliminate it.

23 CHAIRPERSON MITTEN: I guess the reason
24 why I thought that it had to do with the delicatessen
25 was because the types of eating or drinking

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1 establishment that goes in, a gas station, grocery
2 store, billiard parlor, tends to be like a
3 delicatessen type of thing.

4 COMMISSIONER PARSONS: I see what you
5 mean. Okay.

6 CHAIRPERSON MITTEN: But what this would
7 have happen, the way (e) is written now, is it would
8 have the entire establishment for gas stations,
9 grocery store and the billiard parlor to be classified
10 as one of those uses that would be counted.

11 COMMISSIONER PARSONS: Right.

12 CHAIRPERSON MITTEN: So --

13 COMMISSIONER PARSONS: Okay. Sorry. Go
14 on.

15 CHAIRPERSON MITTEN: I think it's not a
16 big issue. The community seems to be in favor of
17 eliminating that and we would agree. Okay.

18 COMMISSIONER HILDEBRAND: I'm sorry. Did
19 you keep (d)?

20 CHAIRPERSON MITTEN: We kept (d).

21 COMMISSIONER HILDEBRAND: Okay.

22 CHAIRPERSON MITTEN: Okay, (f). Well, if
23 we're eliminating Certificates of Occupancy, let's
24 see, this would have to be modified for the license to
25 lapse, so it should read something like the linear

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1 street frontage of a property should be excluded from
2 the measurement of eating and drinking establishment
3 uses if the property is not licensed or does not hold
4 a license or whatever the proper terminology would be,
5 that a license is referenced in 1302.5, in the
6 introduction, one of those licenses, because then that
7 would be -- that's -- I don't know how.

8 If we don't use the word current, Mr.
9 Bergstein, how would we capture that? You seem to
10 have an issue for us about current.

11 MR. BERGSTEIN: Well, the question is do
12 you want to do this three year rule? Then if you
13 don't, then the fact that the measurement only relates
14 to current licenses would just take care of it,
15 because if they don't have a current license, they
16 won't be included within the measurement.

17 What (f) goes to is do you want to permit
18 a period of time after the sort of discontinuation of
19 the use for the use to be continued to be included in
20 the measurement and then, if so, the rule normally is
21 if you get a different C of O during that three year
22 period, then of course you, in essence, take steps to
23 abandon that use and, therefore, there is no reason to
24 include the use within the --

25 CHAIRPERSON MITTEN: Right.

1 MR. BERGSTEIN: So that's why C of Os is
2 used in (f) and I'm not sure if using a license would
3 work there. The question is if there has been an
4 observation that there has been a discontinuation of
5 the use, then you have got three years from that date
6 to do something about it. If you're going to play it
7 with a lapse of a license, I guess you can do the same
8 thing, but there's --

9 CHAIRPERSON MITTEN: It just strikes me
10 that we need to be consistent. If what we're looking
11 to is the defining quality is the license, then it's
12 when you lose that defining quality that you no longer
13 get counted.

14 MR. BERGSTEIN: Well, the fact of the --
15 the earlier provision, which requires that it be based
16 solely upon, as you edited it, the records of existing
17 licenses takes care of that. If you just want to say
18 once you no longer hold one of these licenses, you're
19 out of the measurement, then you don't need (f)
20 anymore, (f) just allows for a period after your use
21 has ceased for --

22 CHAIRPERSON MITTEN: Okay.

23 MR. BERGSTEIN: -- that space to be made
24 available for a new person to take advantage of it.

25 CHAIRPERSON MITTEN: Okay. Okay. So we

1 could eliminate (f) entirely, you're saying?

2 MR. BERGSTEIN: Yes, you can.

3 CHAIRPERSON MITTEN: Okay. Then I would
4 be in favor of eliminating (f) entirely. Okay. I
5 think we can get rid of (g) for the same reason.
6 Okay. I think (h) is fine, but I think it had been
7 pointed out earlier that this sort of presumes that
8 there is a measurement that exists now that I don't
9 think we can presume.

10 So I think what we would have to say is I
11 have something where within -- if the measurement is
12 not completed within some period after the approval of
13 this text amendment, then the same assumption would
14 apply and then it would be -- right? Okay.

15 So I would say something like if the
16 measurement of linear street frontage occupied by
17 eating and drinking establishments is not completed
18 after a six month period or if the measurement of
19 linear street frontage occupied by eating and drinking
20 establishments is not updated during each one year
21 period thereafter, it shall be assumed that the linear
22 street frontage occupied by eating and drinking
23 establishments exceeds the applicable percentage
24 limitation until a subsequent update indicates
25 otherwise or something like that. Okay?

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1 MR. BERGSTEIN: You don't need (i) if
2 you're going to go --

3 CHAIRPERSON MITTEN: No, we don't need
4 (i). Okay. I don't think we need (j). Well, and
5 (k), Mr. Bergstein, can we modify it to say no new
6 building permits rather than no new Certificates of
7 Occupancy or can you do that or should we just confine
8 ourselves to Certificates of Occupancy and if people
9 want to get building permits --

10 MR. BERGSTEIN: It would be building
11 permits, because there is an earlier provision that
12 was proposed that I have modified in my memo to you
13 that basically said compliance is based upon building
14 permits and won't be revisited at the C of O.

15 CHAIRPERSON MITTEN: Okay.

16 MR. BERGSTEIN: So, in other words, if you
17 have gotten your building permit, you are vested.

18 CHAIRPERSON MITTEN: Right.

19 MR. BERGSTEIN: And, therefore, you can
20 just change this to building permit.

21 CHAIRPERSON MITTEN: Okay. So no new
22 building permits. Then (l), again, the Certificate of
23 Occupancy would be changed to building permit.

24 MR. BERGSTEIN: Yes, (m), I believe, was
25 in the original provision that I moved down to the

1 end, but I'm going to check on that.

2 CHAIRPERSON MITTEN: (m)?

3 MR. BERGSTEIN: (m) was in the original
4 1302.5, but I just want to basically check to make
5 sure that's correct. Yes, it's the current 1302.5(b).

6 CHAIRPERSON MITTEN: I'm sorry. Say that
7 again. Do we need (m) or not?

8 MR. BERGSTEIN: (m) is really not a new
9 provision. It's part of the existing provision that
10 was 1302.5, but because it referenced just paragraph
11 A, which is the only paragraph there currently is, I
12 moved it all the way to the (m) and then referenced
13 all the new paragraphs.

14 CHAIRPERSON MITTEN: Okay.

15 MR. BERGSTEIN: So it's really not a new
16 provision.

17 CHAIRPERSON MITTEN: Okay.

18 MR. BERGSTEIN: It's just moved down and
19 added, and more provisions are included in it.

20 CHAIRPERSON MITTEN: Okay.

21 MR. BERGSTEIN: And so now are more new
22 provisions.

23 CHAIRPERSON MITTEN: All right. So are
24 you relatively clear on what we have done so far, Mr.
25 Hildebrand?

1 COMMISSIONER HILDEBRAND: Yes, I believe
2 I am.

3 CHAIRPERSON MITTEN: Okay. Great. Well,
4 then I would move approval of Case No. 02-06 with the
5 changes that we just made.

6 COMMISSIONER PARSONS: Second.

7 CHAIRPERSON MITTEN: And I'm not going to
8 repeat them. Is there any further discussion? All
9 those in favor, please, say aye.

10 ALL: Aye.

11 CHAIRPERSON MITTEN: I believe there are
12 none opposed, Mrs. Schellin.

13 MS. SCHELLIN: Staff would record the vote
14 5-0-0 to approve proposed action in Case No. 02-06,
15 Commissioner Mitten moving, Commissioner Parsons
16 seconding and Commissioners Hildebrand, Hood and
17 Jeffries in favor.

18 CHAIRPERSON MITTEN: Okay. Next we have
19 a motion for reconsideration of an order that we
20 issued related to the Georgetown University Performing
21 Arts Center, and I'm just going to ask Mr. Bergstein
22 to just give us a two minute explanation of this and
23 give us our options, if you would.

24 MR. BERGSTEIN: Okay. This case began
25 with the further processing under what I will call the

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1 BZA Initial Campus Plan Order for Georgetown, which
2 has since been vacated and replaced with a new order.
3 Under the further processing, an issue arose
4 concerning compliance, specifically whether or not the
5 university's enrollment exceeded the amount specified
6 in the first BZA order.

7 The BZA order did not indicate whether or
8 not enrollment would be ascertained by an average or
9 by what the figure was as of the date of the
10 application. In its order granting the further
11 processing request, the Zoning Commission held that
12 the BZA's intent was to have it done based upon the
13 actual date of the application and not an averaging.

14 The university moved to have the Zoning
15 Commission reconsider that and asked instead that it
16 be based upon an averaging. Again, the Zoning
17 Commission rejected that view based upon what it
18 viewed to be the intent in the first BZA order and
19 held that it would be determined based upon the date
20 of the application, but stayed the effect of that for
21 a year in order for the university to be able to make
22 any accommodations it might need in enrollment.

23 After the decision was reached, but before
24 the order came out, the BZA in response to the remand
25 issued a new campus plan order and said that

1 compliance would be based upon averaging. Shortly
2 after the BZA order came out that said compliance will
3 be based upon averaging, the Zoning Commission order,
4 which denied the reconsideration came out and said
5 that under the first BZA order, compliance would be
6 based upon the actual date and not averaging but,
7 basically, it was dealing with an order that was
8 superseded and had been replaced by a new BZA order.

9 The timing was unfortunate, because it
10 seemed to suggest that the Zoning Commission intended
11 that compliance would be based upon something that the
12 BZA has now said it shouldn't be based upon. So the
13 long and short of it is that the university is asking
14 for clarification and the simplest clarification would
15 be, at this point, everything that was said in that
16 order about compliance is now moot, because that order
17 has been displaced by a new BZA campus plan that
18 specifies how compliance should be done and that is
19 based upon averaging.

20 And I think your option is to either grant
21 that. The definition of mootness is when an issue, a
22 legal issue is no longer live, and I think that what
23 has transpired here does meet the legal definition of
24 mootness. So you can -- if you can actually grant the
25 motion for reconsideration by declaring your prior

1 discussion of compliance to be moot or not, but that
2 would be your options.

3 CHAIRPERSON MITTEN: Okay. Well, I will
4 move that we grant, as you suggested, Mr. Bergstein,
5 that we grant the motion for reconsideration, because
6 the issue is now moot, but I won't do that without
7 saying that what I find frustration about what the BZA
8 did with the decision that was made by the Zoning
9 Commission that averaging would not be permitted is
10 when -- I mean, I remember this very distinctly, is
11 that when we were seeking to interpret their order,
12 that we went back and we looked for evidence in the
13 record about what the testimony had been about the
14 population and how that information was applied.

15 And it was very clear to me that it was
16 never intended to be averaging, so I'm disappointed
17 that when you're reviewing your own record, as we did,
18 that the BZA did not come to the same conclusion. But
19 notwithstanding that, the issue has been taken care of
20 and it's out of our hands, at this point, so I would
21 ask for a second.

22 COMMISSIONER PARSONS: I would second that
23 with the same -- well, I will disassociate myself from
24 your remarks, because we spent a lot of time going
25 through transcripts and understanding. I mean, maybe

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1 there's new information that came to the BZA that we
2 haven't seen, but it is startling.

3 CHAIRPERSON MITTEN: Anyone else? Okay.
4 Then we have a motion that is seconded to grant the
5 motion for reconsideration, because the issue is moot.
6 All those in favor, please, say aye.

7 ALL: Aye.

8 CHAIRPERSON MITTEN: Any opposed, say no.

9 COMMISSIONER HILDEBRAND: Madam Chair, I
10 didn't participate in the case, so I don't know that
11 I can vote on this motion.

12 CHAIRPERSON MITTEN: Mr. Bergstein doesn't
13 seem to perhaps agree.

14 COMMISSIONER HILDEBRAND: If I can vote on
15 the motion, then I would agree with --

16 MR. BERGSTEIN: I think it's such a
17 defined legal issue. It doesn't require you to look
18 at the findings of fact.

19 COMMISSIONER HILDEBRAND: Okay.

20 MR. BERGSTEIN: It's really a question of
21 has the subsequent publication of the BZA order made
22 the issue moot, so I believe you can participate.

23 COMMISSIONER HILDEBRAND: Okay.

24 CHAIRPERSON MITTEN: Okay. Mrs. Schellin?

25 MS. SCHELLIN: The staff would record the

1 vote 5-0-0 to grant reconsideration of the order
2 issued as the issue is now moot in Case No. 02-32A,
3 Commissioner Mitten moving, Commissioner Parsons
4 seconding, Commissioners Hildebrand, Hood and Jeffries
5 in favor.

6 CHAIRPERSON MITTEN: Thank you. And then
7 our last item, which is kind of interesting, is we
8 have a piece of correspondence from Councilmember
9 Ambrose regarding the interpretation or there has been
10 an interpretation that is being advanced of charter
11 schools as public schools, which are permitted as
12 matter-of-right under the Zoning Regulations and,
13 apparently, this is becoming problematic in a
14 particular case.

15 And I'm going to ask the Office of
16 Planning to comment on this. Have you seen the letter
17 by any chance? Okay. Basically, this has been
18 triggered by a property on Capitol Hill, I believe,
19 but they brought a copy of the Residential Zone and
20 are now asking to be considered a matter-of-right use
21 and it's causing some problems, because there wouldn't
22 be any controls in place.

23 And so this is something that I think is
24 very timely because, clearly, charter schools have
25 been going into Residential Zones in former school

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1 buildings and so on, and it's a question that needs to
2 be answered. So we would look to you for your
3 assistance.

4 I don't know if there is -- you know, I
5 think that they certainly have some commonalities with
6 public schools, but I think public schools -- there
7 are certain features of public schools that are not
8 shared by charter schools and, in fact, they act more
9 like private schools in many respects than they do
10 public schools and there are controls in Residential
11 Zones on private schools. So I don't know if you have
12 initial reactions to that.

13 MS. MCCARTHY: I was more going to ask a
14 question of would you be just looking for us to do a
15 memo back on the arguments on each side or make a
16 recommendation in terms of modifying the Zoning Regs?

17 CHAIRPERSON MITTEN: I think we're going
18 to need to get to the point where we have
19 recommendations. I think that perhaps you can follow-
20 up with the councilmember's office to find out what
21 exactly is happening.

22 I have some general sense that there is an
23 acute problem that needs to be dealt with, and I don't
24 know if the Zoning Administrator feels equipped to
25 deal with it or needs some help from us, and I don't

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1 know if an emergency text amendment is in order or
2 what, but we need someone to do some research for us
3 about the degree of urgency but, clearly, there is an
4 issue that needs to be more fully developed.

5 MS. McCARTHY: Right, and we had been
6 aware that there was an issue raised, but we didn't
7 have enough specific information, because our initial
8 information was charter schools are D.C. public
9 schools, but that would make the use a matter-of-
10 right, but it doesn't mean that it could locate in a
11 row house block, which was our understanding, without
12 needing relief in many other respects.

13 So it seems like we need to both look at
14 the specifics of this case and at the zoning
15 provisions that govern height and setbacks of public
16 schools in general, and then also look at the issue.
17 I know the Zoning Administrator's argument is that
18 it's not approved by the Board of Education, I think
19 is the specific language, that delineates public
20 schools in the Zoning Regs and that is true, because
21 there is a different body that approves charter
22 schools.

23 CHAIRPERSON MITTEN: There's actually two.

24 MS. McCARTHY: Right.

25 CHAIRPERSON MITTEN: There's two bodies.

1 MS. McCARTHY: Right, there's two
2 different bodies. One is in a moratorium at the
3 moment, but anyhow, it seems like there are a lot of
4 issues, so we certainly would be happy to follow-up on
5 that.

6 CHAIRPERSON MITTEN: Yes, there are. So
7 whatever way, if you could become our, you know,
8 conduit for more information on this and, you know,
9 whatever you think is an appropriate way to deal with
10 it and just bring it back to the Commission. And, you
11 know, Lord knows, we have enough hearings. We would
12 have a Special Public Meeting beforehand to take up
13 anything that you want to bring to us on an urgent
14 basis.

15 Anyone else on the subject? Am I
16 forgetting anything else or are we done for the
17 evening? Okay. Thank you everyone and we're now
18 adjourned.

19 (Whereupon, the Regular Public Meeting was
20 concluded at 9:54 p.m.)
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